

CONGRESSIONAL REAPPORTIONMENT



FEBRUARY, 1929

What the Constitution Provides
History of Reapportionment
Provisions of the Pending Bill

Articles by

Dr. Joseph A. Hill, Bureau of the Census
Hon. E. Hart Fenn, Representative from Connecticut
Marion E. Rhodes, late Representative from Missouri

Pro and Con

Should The Reapportionment Bill be Passed?

Regular Departments

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The Congressional Digest

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Contents for This Month

Legislative Department:

The Pro and Con Feature—Congressional Reapportionment.

What the Constitution Provides.....	33
A Brief Chronology of Congressional Reapportionment.....	34
The Reapportionment Bill, 1929 (Analysis).....	35
The Majority Committee Report on Reapportionment.....	36
The Minority Committee Report on Reapportionment.....	38
Analysis of Past Reapportionment Laws.....	
Marion E. Rhodes.....	39
Reapportionment Under Estimated Population of the U. S. in 1930.....	41
Apportionment Methods Described.....	
Dr. Joseph A. Hill.....	42
Provisions of the Census Bill.....	
Hon. J. Hart Penn.....	45
How Foreign Parliaments Compare With U. S. Congress.....	46
Should House of Representatives Be Held to Its Present Size?.....	
Hon. Carroll L. Beedy (Pro) vs. Hon. Ralph F. Lozier (Con).....	47
Should a Reapportionment Bill be Passed before 1930?.....	
Hon. Clarence J. McLeod (Pro) vs. Hon. John E. Rankin (Con).....	49
Is the Reapportionment Bill Fair to Future Congresses?.....	
Hon. John Q. Tilson (Pro) vs. Hon. Otis Wingo (Con).....	51
University Professors Advocate Major Fractions.....	52
University Professors Advocate Equal Proportions.....	53
The February Outlook in Congress.....	
Norborne T. N. Robinson.....	54
The Panama and Nicaragua Canals Survey Resolution.....	
Hon. Walter E. Edge.....	56

This Month:

Action by Congress, December 21, 1928, to January 19, 1929.....	58
---	----

Executive Department:

The White House Calendar, December 17, 1928, to January 19, 1929.....	61
---	----

Judicial Department:

The Month in the Supreme Court, January 2 to January 21.....	62
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Back numbers of The Congressional Digest are indexed in the Readers' Guide

The Congressional Digest

February, 1929

Vol. 8 - No. 2

LEGISLATIVE DEPARTMENT

THE PRO AND CON FEATURE ACTION BY HOUSE AND SENATE LEGISLATIVE NEWS ITEMS

THE PRO AND CON FEATURE:

Congressional Reapportionment

Reapportionment Since 1792

Provisions of Pending Bill

Apportionment Methods Discussed

Should the Reapportionment Bill Be Passed?—Discussed Pro and Con

Functions of State Legislatures

Make-up of Foreign Parliaments

Past Legislation Analyzed

What the Constitution Provides



ARTICLE I, section 2, clause 3:

"The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct."

Article I, section 4, clause 1:

"The time, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations except as to the places of choosing Senators."

Article I, section 8, clause 18:

"The Congress shall have power . . . to make all laws which shall be necessary and proper for carrying into execution foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in department or officer thereof."

Amendment 14, section 2:

"Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the whole number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

Amendment 14, section 5:

"The Congress shall have power to enforce, by appropriate legislation the provisions of this article."

A Brief Chronology of Congressional Reapportionment

1789—On March 4, the date fixed by the Constitution of the United States for the beginning of the new Government, the House of Representatives contained 65 members. The Constitution (Article I, Section 2), provided that an enumeration of the citizens of the country should "be made within three years after the first meeting of the Congress of the United States" and that "The Number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made the State of New Hampshire shall be entitled to choose three, Massachusetts, eight, Rhode Island and Providence Plantations, one, Connecticut, five, New York, six, New Jersey, four, Pennsylvania, eight, Delaware, one, Maryland, six, Virginia, ten, North Carolina, five, South Carolina, five and Georgia, three."

1790—The first census was taken pursuant to the provisions of the Constitution, population, 3,929,214.

1792—On March 26, an apportionment bill was presented to President George Washington, having passed both Houses of Congress.

On April 5, President Washington sent the bill back to Congress with the following veto message:

"Gentlemen of the House of Representatives:

"I have maturely considered the act passed by the two Houses entitled 'An act for an Apportionment of Representatives among the several States, according to the first Enumeration;' and I return it to your House, wherein it originated, with the following objections:

"First. The Constitution has prescribed that Representatives shall be apportioned among the several States according to their respective numbers; and there is no one proportion or divisor which, applied to the respective numbers of the States, will yield the number and allotment of Representatives proposed by the bill.

"Second. The Constitution has also provided that the number of Representatives shall not exceed one for every thirty thousand; which restriction is, by the context, and by fair and obvious construction, to be applied to the separate and respective numbers of the States; and the bill has allotted to eight of the States more than one for every thirty thousand.

"G. WASHINGTON."

1792—Congress passed the first apportionment act, effective April 14. The Act provided for one Representative in each State for every 35,000 persons, which gave the House 106 members.

1800—The second census was taken, population, 5,308,483.

1802—Congress passed the second apportionment act, effective January 14, providing for one Representative in each State for every 35,000 persons which gave the House 142 members.

1810—The third census was taken, population, 7,239,881.

1811—The third apportionment act was passed, effective December 21, with the same proportions of 35,000 giving the House 186 members.

1820—The fourth census was taken, population, 9,638,453.

1822—The fourth apportionment act was passed, effective March 7, changing the proportion to one Representative in each State for every 40,000 persons. This gave the House 213 members.

1830—The fifth census was taken, population, 12,866,020.

1832—The fifth apportionment act, effective May 22, was passed. It changed the proportion to one member in each State for each 47,000 persons, and gave the House 242 members.

1840—The sixth census was taken, population, 17,069,453.

1842—The sixth apportionment act was passed, effective June 25. It changed the ratio to one Representative for every 70,683 persons, reducing the House to 232 members.

1850—The seventh census was taken, population, 23,191,876, pursuant to an act passed by Congress, effective May 23, which directed the Secretary of the Interior to make the apportionment and contained other changes in method. (See special article this issue, page 39.)

1852—Congress passed a supplementary act to the act of 1850, fixing the membership of the House at 234 instead of 233, as provided in the act of 1850.

1860—The eighth census was taken, population, 31,443,321.

1862—An act of Congress, approved March 4, provided that after March 3, 1863, the House should consist of 241 members. The ratio of apportionment was

1866—On June 16, Congress adopted a resolution submitting the Fourteenth Amendment to the Constitution to the States for ratification.

Section 2, of the Fourteenth Amendment changed the qualifications of voters.

1866-1867-1868—Various State legislatures ratified the Fourteenth Amendment.

1868—On July 28, the Secretary of State issued a proclamation announcing that two-thirds of the States had ratified the Fourteenth Amendment.

The States of Delaware, Maryland, Kentucky and Texas rejected this amendment. New Jersey, Oregon and Ohio after agreeing to the Fourteenth Amendment withdrew their consent.

1869—On October 8, subsequent to the proclamation by the Secretary of State, Virginia ratified the Amendment.

1870—The ninth census was taken, population, 38,558,371.

1872—Congress passed an act, approved February 2, fixing the membership of the House at 283; provided for Congressional Districts and fixed the first Tuesday after the first Monday, of the even numbered years, beginning with the year 1876, as the date for choosing Representatives and Delegates in Congress.

1880—The tenth census was taken, population, 50,155,783.

1882—Congress passed an act, approved February 25, fixing the membership of the House at 325 members. It provided for no ratio of apportionment, but made several changes in method. (See special article, this issue, page 39.)

1890—The eleventh census was taken, population, 62,947,714.

1891—Congress passed an act, approved February 7, fixing the membership of the House at 356 members, and making provisions for redistricting in those states whose representation was increased.

1900—The twelfth census was taken, population, 75,994,575.

1901—The Congress passed an act effective increasing the membership of the House to 386 members. This act, like


Continued on page 46

The Reapportionment Bill, 1929

Its Provisions Officially Analyzed

The pending Reapportionment Bill (H. R. 11725) was reported to the House from the Committee on the Census January 8, 1929. It was taken up by the House under a resolution (H. Res. 284) brought in by the Committee on Rules on January 10, and passed January 11, by a vote of 227 to 134; not voting 66. In the Senate it was referred to the Committee on Commerce. It was reported to the Senate on January 15, and placed on the calendar.

Section 1

 HAT on the first day of the second regular session of the Seventy-first Congress and of each fifth Congress thereafter, the Secretary of Commerce shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the fifteenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of four hundred and thirty-five Representatives made in the following manner: By apportioning one Representative to each State (as required by the Constitution) and by apportioning the remainder of the four hundred and thirty-five Representatives among the several States according to their respective numbers as shown by such census, by the method known as the method of major fractions.

Duties of the Secretary of Commerce

This section directs the Secretary of Commerce to transmit to the Congress on the first day of the second regular session of the Seventy-first Congress and of each fifth Congress thereafter figures showing the population of the several States as taken by the 1930 census and each subsequent decennial census, and also the number of Representatives each State would be entitled to under such census on the basis of 435 Representatives.

Section 2-(a)

If the Congress to which the statement required by section 1 is transmitted fails to enact a law apportioning the Representatives among the several States, then each State shall be entitled, in the second succeeding Congress and in each Congress thereafter until the taking effect of a reapportionment on the basis of the next decennial census, to the number of Representatives shown in the statement; and it shall be the duty of the Clerk of the last House of Representatives forthwith to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the officer who, under section 32 or 33 of the Revised Statutes, is charged with the preparation of the roll of Representatives-elect.

(b) This section shall have no force and effect in respect of the apportionment to be made under any decennial census unless the statement required by section 1 in respect of such

census is transmitted to the Congress at the time prescribed in section 1.

If Congress Fails to Act

This section provides that if Congress fails to act before the end of such second regular session, then the reapportionment tabulated by the Secretary of Commerce as directed by this bill shall become law. This section also provides that the reapportionment tabulated by the Secretary of Commerce shall not go into effect unless the statement required by section 1 is presented to the Congress "on the first day of the second regular session of the Seventy-first Congress and of each fifth Congress thereafter."

The Clerk of the House is the official through which the States are notified of the official representation to which they are entitled.

Section 3

In each State entitled under this act to more than one Representative, the Representatives to which such State may be entitled in the Seventy-third and each subsequent Congress shall be elected by districts equal in number to the number of Representatives to which such State may be entitled in Congress, no one district electing more than one Representative. Each such district shall be composed of contiguous and compact territory and contain as nearly as practicable the same number of individuals.

Section 4

In the election of Representatives to the Seventy-third or any subsequent Congress in any State which under the apportionment provided for in section 2 of this act is given an increased number of Representatives, the additional Representative or Representatives apportioned to such State shall be elected by the State at large, and the other Representatives to which the State is entitled shall be elected as therefore, until such State is restricted in the manner provided by the laws thereof and in accordance with the provisions of section 3 of this act.

Section 5

In the election of Representatives to the Seventy-third or any subsequent Congress in any State which under the apportionment provided for in section 2 of this act is given a decreased number of Representatives, the whole number of Representatives to which such State is entitled shall be elected by the State at large until such State is restricted in the manner provided by the laws thereof and in accordance with the provisions of section 3 of this act.

Sections 3, 4 and 5 are substantially the same provisions as in previous reapportionment acts since 1840.—*Extracts, see 1, page 64.*

Majority and Minority Committee Reports on Reapportionment

The Majority Report

Submitted to the House by Representative E. Hart Fenn (Conn., R.), Chairman of the Committee on the Census, January 8, 1929



REAPPORTIONMENT bill has been enacted every 10 years since 1790, as provided for by the Constitution of the United States. In every instance since 1790 reapportionment bills were enacted within two years after the taking of the census.

Efforts were made in the Sixty-sixth and Sixty-seventh Congresses to enact reapportionment legislation, but without success. The long honored tradition, therefore, has been broken for the first time and creates a precedent which is fraught with serious consequences. In fact the chief purpose of this bill is to prevent a repetition of this situation.

The Reapportionment of 1911

The last reapportionment was made in 1911 on the basis of the 1910 census. This allocated 435 Members among the 48 States to represent 91,641,197 people. The population in 1920, excluding the District of Columbia, was 105,271,200. Clearly this indicates that failure to pass a reapportionment act in 1910 has left 13,631,852 people without fair and equitable representation in Congress. The founders of our Government would have been amazed at a situation in which a population three times the population which existed at the time of the adoption of the Constitution is denied fair and equitable representation in the House of Representatives. If this dangerous precedent—failure to reapportion—were repeated in 1930-31, approximately, 31,000,000 people would be legislated for without having fair and equitable representation in what is considered the most representative legislative body in the world.

Anticipatory Legislation

To prevent this situation from arising, this bill is recommended to the House. It is anticipatory legislation. It seeks to meet an emergency situation which might develop in 1930. This type of legislation is not without precedent. In 1850 the Thirtieth Congress provided that the future reapportionment made on the basis of the 1850 Census should be made by the Secretary of the Interior, and it was so made and approved.

The committee feels that the same forces and conditions which prevented a reapportionment in 1920 might arise in 1930. In fact, in some respects the situation might be even more acute because of the great increase in population since 1920.

The Census of 1920

The technical reason given for failure to reapportion in 1920 was that the census of 1920 did not fairly represent the population of the rural districts. This charge was based on two grounds:

First—That the census of population was taken as of January 1, 1920, which was considered unfair to the rural districts, especially in the years following the close of the

World War; and

Second—That the actual enumeration was not efficient.

Effect of the Proposed 1920 Reapportionment

Notwithstanding this the debates in Congress show that the real stumbling block was the fact that unless the size of the House were increased far beyond its then membership many States would have lost one or more representatives by the apportionment bill proposed in 1920, as shown by the following:

Indiana would have lost 1; Iowa, 1; Kansas, 1; Kentucky, 1; Louisiana, 1; Maine, 1; Mississippi, 1; Missouri, 2; Nebraska, 1; Rhode Island, 1, and Vermont, 1, making a total loss of 12.

The bill reported to the House in 1920 provided for a membership of 460. This was objected to on the ground that the House would have become too large and unwieldy, and even at this figure (460) Maine and Missouri each would have lost a Representative. To have preserved the membership of Maine and Missouri it would have been necessary to increase the size of the House to 483.

Population in 1930 estimated at 123,000,000

The estimated population for 1930 is approximately 123,000,000. If the House membership were retained at its present size (435) and the same mathematical method used for apportionment as was used in 1910, namely, the method of major fractions, the following losses would occur:

Alabama, 1; Indiana, 2; Iowa, 2; Kansas, 1; Kentucky, 2; Louisiana, 1; Maine, 1; Massachusetts, 1; Mississippi, 2; Missouri, 3; Nebraska, 1; New York, 1; North Dakota, 1; Pennsylvania, 1; Tennessee, 1; Vermont, 1, and Virginia, 1, making a total loss of 23.

It is obvious that the same motive which actuated many members to vote against the bill in 1920 would operate with greater effect in 1930, as shown by the preceding table, and to satisfy the membership of those States which would lose, the size of the House would have to be increased to approximately 535. It takes no great amount of imagination to visualize the amount of opposition that might naturally rise up against a proposal which would increase the membership from 435 to 535. It is logical to assume, therefore, that there might be discontent and opposition on the part of members of States which are likely to lose in 1930.

States Expected to Gain in 1930

It is fair to assume that the pressure for reapportionment would be equally great on the part of those States which would gain in 1930. This is shown below:

Arizona, 1; California, 6; Connecticut, 1; Florida, 1; Michigan, 4; New Jersey, 2; North Carolina, 1; Ohio, 3; Oklahoma, 1; Texas, 2, and Washington, 1, making a total of 23.

The committee desires to caution the Members of the

House in the use of the 1930 estimate of population. At best the 1930 figures, at this time, are not to be taken too seriously either as the aggregate population of the country, or the distribution of population among the several States.

The 1930 population estimates, it should be emphasized, are only rough approximations derived from the increase of population from 1910 to 1920 and the record of births and deaths, immigration and emigration, from 1920 to 1927.

Breaking a Possible Deadlock

It is to avoid, so far as possible, this possible deadlock between the States that gain and the States that lose that the committee feels justified in recommending H. R. 11725.

The general principle of the bill is simply this: If Congress fails to reapportion in 1930-31, then automatically the House is reapportioned in accordance with the tabulation transmitted by the Secretary of Commerce in his ministerial capacity as provided for in this bill; the tabulations transmitted to Congress are on the basis of the 1930 census, with the House membership remaining at 435.

An analysis of the bill will show that Congress always reserves to itself the right to make the reapportionment at any time it sees fit to do so. It is only in the event that Congress fails to do this that the provision for the automatic reapportionment goes into effect, and then only remains in effect until action is taken by Congress.

Arguments for the Bill

Power of Congress.—It is apparent from a reading of the bill that Congress does not divest itself of any authority. There is nothing in the bill which would preclude Congress at any time in the future, that is, at any time between 1930 and 1940, from passing an apportionment bill of any character it sees fit to pass, as provided for in the Constitution. Congress might increase the size of the House to 535, it might make it 500, it might make it 475, or leave it where it is. In this bill there is no suggestion made to any future Congress as to what the size of the House membership shall be.

Future Congresses Not Bound

Neither is any future Congress bound as to the method to be used in allocating the membership of the House. On this matter also the future Congresses are free to act just as they would be if no legislation were enacted of the kind here recommended. It should be borne in mind, and the committee desires to state again, that even though the Seventy-first Congress fails to take action and the apportionment tabulated by the Secretary of Commerce becomes legally operative, the Seventy-second and every succeeding Congress is still free to enact apportionment legislation.

The sole and ultimate effect, therefore, of this proposed legislation would be to provide for a reapportionment based upon a tabulation made by an executive department of the Government acting in a ministerial capacity, which would remain in force and effect until Congress itself should act. The effect of this would be to have decennial reapportionment as contemplated by the Constitution.

Spirit of Constitution Violated

The committee is strongly of the opinion that the failure to reapportion is a violation of the spirit, if not of the letter of the Constitution. It holds the view that no section of the Constitution is more fundamental to our Government than this section. Without its observance representative Government becomes a sham.

This being so, the question might arise why not report out a reapportionment bill now on the basis of the 1920 Census? The committee feels that this would be a gesture at this time. There is not sufficient sentiment in the com-

mittee or in the House for such a proposition. We are too close to the 1930 Census to prescribe now, at this late date, for a reapportionment on a census taken nearly eight years ago, and on the basis of an enumeration the accuracy and fairness of which have been seriously questioned.

Arguments Against the Bill

The main, if not the sole, argument advanced against this proposed legislation is that Congress ought not to divest itself of any authority or power conferred upon it by the Constitution in the reapportionment of Congress. This argument has a double aspect:

First—Has Congress the power to pass an apportionment act with reference to a census to be taken in the future?

Second—Specifically has Congress the power to direct the tabulation of an apportionment by the Secretary of Commerce to be used in an emergency, as provided for in this bill?

Anticipatory Legislation Not Unconstitutional

It is true that, with one exception, it has been the practice of Congress to wait until after the census returns have been gathered and reported before passing apportionment legislation. There does not, however, appear to be any constitutional prohibition with reference to legislation of an anticipatory character as provided for in this bill.

When the act of 1850, a law of a similar anticipatory character, was enacted there was not the slightest doubt in the minds of the Senators and Representatives as to the constitutionality of providing in advance for the apportionment of Representatives upon a basis of definitely limited membership.

Only Ministerial Functions Assigned

A careful reading of the bill before us shows that it is merely a ministerial function which is being assigned by Congress to an executive department. It is no different from many other ministerial functions which have been assigned to the executive departments from the beginning of our Government. There is no delegation of legislative power either stated or implied in this proposed legislation. The function which is assigned to the Secretary of Commerce in this instance does not begin to go as far as that which was assigned when Congress enacted the flexible provisions of the tariff act or the creation of the Interstate Commerce Commission, and similar legislation.

Secretary of Commerce Has No Discretionary Power

A close scrutiny of the bill reveals this to be the situation: The Secretary of Commerce is left with no discretionary power. He must use absolutely, without deviation, the population of each State as gathered and reported by the Director of the Census. The Secretary of Commerce is definitely and explicitly held down to a specific number as to the size of the House, namely, 435. In the third place, the Secretary of Commerce is bound in the bill to use a specific, concrete, and exact scientific method in allocating the 435 members, namely, by a method known as the method of major fractions. This incidentally was the method used in the last reapportionment, 1910.

Legality of Anticipatory Features

When anticipatory legislation was under discussion before the committee at the last Congress, the legislative reference service, an agency created by Congress, was asked for its opinion on the legality of this provision of the bill. After reviewing legislation and decisions of the Supreme Court this legislative reference service states in its letter to the chairman of the committee, Mr. Fenn, as follows:

"In view of these numerous decisions of the Supreme

Court it would appear only too obvious that the mere conferring of authority upon the Secretary of Commerce to make the apportionment of Representatives in Congress immediately upon the completion of future censuses could in no sense be considered as a delegation of legislative power. He would be following merely a prescribed rule laid down by Congress and his function could be considered only as ministerial."

Public Opinion for the Bill

Assuming it to be legal and constitutional, is it sound policy for Congress to assign this particular ministerial function to an executive department of the Government? This committee is not unmindful of the increase in authority conferred upon executive departments in recent years. This committee is jealous of congressional authority and would be loath to relinquish any of it. It recommends the assignment of this ministerial function only because of the necessity of preparing for and meeting an emergency which might exist in 1930, such as occurred in 1920.

Public opinion, as reflected by newspaper editorials and newspaper articles, has criticized Congress for its failure to pass reapportionment legislation since 1920.

No fewer than 42 bills for reapportionment have been introduced since 1921.

Changes in the 1928 Bill

It has been contended that anticipatory legislation as provided for in this bill was passed by the last Congress when it voted down the bill, H. R. 17378.

The committee desires to call attention to the fundamental difference in these two bills. The bill at the last Congress, H. R. 17378 (which lacked only 12 votes of securing a majority), provided for an automatic reapportionment by the Secretary of Commerce immediately after the census data had been collected by the Census Bureau. In that bill reapportionment would have been made without waiting for Congress to convene, or without waiting for Congress to take action. The result of the reapportionment tabulation would have been sent immediately after the taking of the census by the Secretary of Commerce to the Clerk of the House and by him to the various States.

Warning to Future Congresses

In the present bill the reapportionment tabulated by the Secretary of Commerce does not go into effect except in the event Congress itself fails to act. The present bill merely notifies the Seventy-first Congress that unless it does reapportion by March 4, 1931, the House will be reapportioned according to the tabulation made by the Secretary of Commerce, and when this has been done that reapportionment will remain in effect until some future Congress does take action.

This proposed legislation, therefore, is an announcement and serving of notice to the Seventy-first Congress, and subsequent Congresses, that if they fail to do their duty as provided by the Constitution, then the reapportionment as provided for in this bill will go into effect.

The Minority Report

Submitted to the House by Representative John E. Rankin (Miss., D.), on January 8, 1929



WE DESIRE to submit briefly our reasons for opposing this bill.

In the first place it is practically the same bill that was rejected by this House on May 18, 1928. It has been slightly denatured by a few minor amendments.

This legislation is unnecessary, and is an attempt to bind a future Congress.

It does not propose to reapportion Congress under the census of 1920, but attempts to legislate for a future Congress relative to a reapportionment on the basis of a census to be taken in 1930.

It also attempts to arbitrarily fix the size of the House at 435 Members without first taking into consideration the iniquities and injustices that might be avoided by adjusting the size of the House under the census of 1930 to take care of all of the States.

The "Major Fractions" Formula

It proposes to lay down a formula, which they call "major fractions," and which few Members of the House will understand and fewer still can explain.

It is proposed to delegate to the Secretary of Commerce the apportioning power, which is primarily vested in the Congress of the United States.

In case Congress failed to act at the first session after the taking of the decennial census, the executive department charged with the duty of taking the census would also have placed in its hands the power of reapportioning the House of Representatives under that census.

Authority Should Not Be Delegated

The Department of Commerce seems to have tried the

case in advance, as they have filed with the Committee on the Census a table showing their estimation of the number of Representatives each State will receive under the census of 1930. This forecast itself shows the inadvisability of delegating the power of reapportionment of Congress to the Department of Commerce.

The Losing States

Under the table prepared they show that, according to their estimation, if the method of "major fractions" is used to reapportion Congress after the census of 1930 is taken, the following States would lose the number of Representatives indicated:

Indiana, 2; Iowa, 2; Kansas, 1; Kentucky, 2; Louisiana, 1; Maine, 1; Massachusetts, 1; Mississippi, 2; Missouri, 4; Nebraska, 1; New York, 2; North Dakota, 1; Tennessee, 1; Vermont, 1; Virginia, 1.

Should Wait Until 1930

Thus, approximately one-third of the States would have their representation arbitrarily reduced without any opportunity to equitably adjust the size of the House to meet the then existing conditions.

In order to avoid the absurd and ridiculous situation in which the passage of this bill would place the Congress, we respectfully submit that it would be better to wait until after the taking of the census of 1930, and then have the House reapportion its membership according to that census.

J. E. RANKIN,
ARTHUR H. GREENWOOD,
RALPH LOZIER,
S. RUTHERFORD,

HENRY D. MOORMAN,
RENE L. DE ROUEN,
JAMES M. FITZPATRICK,
LLOYD THRUSTON.

Analysis of Past Reapportionment Laws

By Marion E. Rhodes,

Late U. S. Representative from Missouri

IT IS clear under the provisions of section 2, Article I, of the Constitution, that the object of taking the census was for the purpose of apportioning direct taxes and Representatives in Congress among the several States. Inasmuch as the census is to be taken once within each period of 10 years, it is also clear this requirement was put into the Constitution in order to equitably apportion Representatives in Congress among the several States and to provide for an increase in the number of Representatives in Congress, from time to time, as the population might increase.

The First Apportionment Act

Following the decennial census of 1790, Congress passed its first apportionment act, effective April 14, 1792. This was a very brief act, consisting of but one short paragraph, conforming to the requirements of the Constitution. All Members of Congress under this act were evidently elected at large, because there is no reference therein to the question of congressional districts. The act provided for one Representative in each State for every 33,000 persons, determined according to section 2 of Article I of the Constitution. (1 Stat. L., p. 253.)

Following the census of 1800, effective January 14, 1802, Congress passed the second apportionment act, providing for one Representative in Congress, for every 33,000 persons in each State, determined according to the Constitution. This act, like the preceding, consisted of but one short paragraph and made no reference to the election of members of Congress by congressional districts. In fact, it was a verbatim copy of the act of 1792. (2 Stat. L., p. 128.)

Ratio Changed in 1811

Following the census of 1810, by act of Congress, effective December 21, 1811, the third apportionment act was passed. The only difference in this act and the two preceding acts was that the ratio was changed to one Member for every 35,000 persons in each State, determined according to the Constitution. (2 Stat. L., p. 669.)

Following the census of 1820, by act of Congress, effective March 7, 1822, Congress passed its fourth apportionment act, which was substantially the same as those preceding, except the basis of representation was fixed as one Representative for every 40,000 persons in each State, determined according to the Constitution, no reference being made in this act to the question of congressional districts. (3 Stat. L., p. 651.)

Following the census of 1830, by act of Congress, effective May 22, 1832, Congress passed its fifth apportionment act, which was substantially the same as each of the preceding acts, except the basis of representation was increased from one Member for every 40,000 persons to one Member for every 47,000 persons, to be determined according to the Constitution, no reference being made to congressional districts. (4 Stat. L., p. 516.)

Congressional Districts Established

Following the census of 1840, by act of Congress, effective June 25, 1842, Congress passed its sixth apportionment act, fixing the ratio at one Representative for every 70,683 persons in each State having a fraction greater than one moiety of the said ratio. This act consists of two paragraphs, the first being substantially the same as in the preceding apportionment acts, except the basis of representation is increased. Section 2 provides as follows: "That in every case where a State is entitled to more than one Representative in Congress, the number shall be elected by districts composed of contiguous territory equal in number to the number of Representatives to which such State may be entitled, no one district to be entitled to more than one Representative." This is the first time in the history of apportionment legislation any reference is made to congressional districts. Members of Congress having been prior to this time either elected at large in the several States or elected by districts fixed by the several States independent of congressional action. In most cases, however, they were elected at large. (5 Stat. L., p. 491.)

The Act of 1850

By act of Congress, effective May 23, 1850, provision was made for taking the seventh decennial census. In this act Congress authorized the Secretary of the Interior to apportion Representatives in Congress among the several States and fixed the number of Members at 233. This act provided for electing one Representative at Large for each major fraction of the ratio. This act also provided for the taking of the census by the United States marshals of the several States. This is the first time in the history of our Government (and I think the only time) that Congress provided for taking the census and determining the representation in Congress in the same act. Under the provisions of this act the Secretary of the Interior was not only directed to apportion Representatives in Congress among the several States, but he was also directed to certify the result to the House of Representatives and to the governors of the several States. (9 Stat. L., p. 433.)

The California Case

However, supplementary to this act, Congress passed an act, effective July 30, 1852, directing the Secretary of the Interior to enforce the provisions of the above-mentioned act. It appears the census returns from the State of California were incomplete, which had resulted in delay on the part of the Secretary of the Interior in complying with the law. The act further provided for an increase of the total membership, previously fixed at 233, to 234. (10 Stat. L., p. 25.)

By act of Congress, approved March 4, 1862, it was provided "that from and after the 3d day of March, 1863, the number of Members of the House of Representatives of the Congress of the United States shall be 241; and the eight

additional Members shall be assigned one each to Pennsylvania, Ohio, Kentucky, Illinois, Iowa, Minnesota, Vermont, and Rhode Island." This act was silent as to the question of laying States out into congressional districts. (12 Stat. L., p. 353.)

Fixing the Date of Elections

By act of Congress, approved February 2, 1872, Congress fixed the number of Representatives at 283 Members, to be elected by districts composed of contiguous territory and containing as nearly as practicable an equal number of inhabitants. Under this act provision was made for electing Members at Large in the States in which an increased number of Representatives had been given under the law, providing that the other Representatives to which the State was entitled should be elected by districts then provided for until the legislature of said State might otherwise provide before the time fixed by law for the election of such Representatives. This act also fixed the first Tuesday after the first Monday in November, beginning with the year 1876, as the day for electing Representatives and Delegates in Congress. This act also provided a method of filling vacancies on account of death or resignation in Congress. Section 6 of the act provided for the enforcement of the fourteenth article of amendment. (17 Stat. L., p. 28.)

Congressional Districts Provided For

By act of Congress, approved February 25, 1882, the House of Representatives was to be composed of 325 Members, there being no reference to the ratio of representation. Section 3 of the act provided that Representatives should be elected by districts composed of contiguous territory and each containing, as nearly as practicable, an equal number of inhabitants. The conclusion of this section follows in the nature of an amendment: "That unless the legislature of such State shall otherwise provide before the election of such Representatives shall take place as provided by law, where no change shall be hereby made in the representation of a State, Representatives thereof to the Forty-eighth Congress shall be elected therein as now prescribed by law. If the number as hereby provided for shall be larger than it was before this change, then the additional Representative or Representatives allowed to said State under this apportionment may be elected by the States at large, and the other Representatives to which the State is entitled by the districts as now prescribed by law in said State; and if the number hereby provided for shall in any State be less than it was before the change hereby made, then the whole number to such State hereby provided for shall be elected at large unless the legislature of said State has provided or shall otherwise provide before the time fixed by law for the next election of Representatives therein." (22 Stat. L., p. 5.)

The Act of 1891

By act of Congress, approved February 7, 1891, the number of Representatives was fixed at 356 Members, apportioned among the several States according to the provisions of this act, without reference to the ratio of representation as in the preceding reapportionment act. This act also provided for the election of Representatives by districts composed of contiguous territory and containing, as nearly as practicable, an equal number of inhabitants. Section 4 of the act, which is very similar to section 3 of the preceding act, is as follows: "That in case of an increase in the number of Representatives which may be given to any State

under this apportionment, such additional Representative or Representatives shall be elected by the State at large, and the other Representatives by the districts now prescribed by law, until the legislature of such State, in the manner herein prescribed, shall redistrict such State; and if there be no increase in the number of Representatives for the State, the Representatives thereof shall be elected from the districts now prescribed by law until such State be redistricted as herein prescribed by the legislature of said State." (26 Stat. L., p. 735.)

Representatives at Large

Following the census of 1900, by act of Congress approved January 16, 1901, the number of Representatives was fixed at 386 Members, apportioned among the several States as in the two preceding acts without reference to the ratio. This act contained substantially the same provision, both with regard to laying out the States into congressional districts and electing Representatives at Large. Section 4, however, contains this provision: "If the number hereby provided for shall in any State be less than it was before the change hereby made, then the whole number in such State hereby provided for shall be elected at large, unless the legislatures of the said States have provided or shall otherwise provide before the time fixed by law for the next election of Representatives therein." (31 Stat. L., p. 733.)

Following the census of 1910, by act of Congress approved August 8, 1911, the number of Representatives was fixed at 433 Members without reference to ratio. This act contains the same provisions with regard to the method of electing Members of Congress and laying States out into congressional districts composed of contiguous territory as in the act of 1901. Under section 4 of this act the same provision was enacted in relation to electing Members at Large as in the preceding reapportionment act, except no provision was made for electing Members at Large on account of a reduction of membership, because under this act no State lost a Member. This act contained an additional section relating to the method of nominating candidates for Congress at large.

Losses in Representation

Under the apportionment act of February 25, 1882, Maine and a few other States each lost a Member of Congress. This act provided specifically for the election of Members of Congress at large, in the event a State lost representation, until such time as the legislature might redistrict the same. While the reapportionment act of January 16, 1901, contained the same provision concerning the election of Members of Congress at large, in the event a State lost membership, as was provided in the act of February 25, 1882, yet under this act no State lost membership. It will be observed from the foregoing history of reapportionment legislation that Congress did not exercise its power, under the Constitution, in directing the several States in the formation of congressional districts during the first 50 years of our national life. In other words, the States were left free to either elect Members of Congress at large or to elect them from local congressional districts of their own making.

First Provision for Congressional Districts

Reviewing the history of congressional elections, it is found that in a vast majority of cases Members of Congress were elected at large in all the States prior to 1842. In

that year, however, Congress for the first time provided that in every case where a State was entitled to more than one Representative in Congress, the number to which such State was entitled should be elected by congressional districts composed of contiguous territory, equal in number to the number of Representatives to which such State was entitled according to the provisions of the act.

Authority Given Secretary of Interior

In the reapportionment act of February 2, 1872, Congress not only provided that congressional districts should be composed as nearly as practicable of equal population. From that day to this, in every reapportionment act, Congress has provided that the several States should be laid out into congressional districts composed of contiguous territory and of equal population.

Under the apportionment act of May 23, 1850, Congress delegated authority to the Secretary of the Interior to reapportion Representatives in Congress according to the census herein provided for, and to certify the result to the House of Representatives and to the governors of the several States.

It is clear from the above-cited cases that Congress from time to time could just as easily have provided that the governors of States might lay out the States into congressional districts as for the legislatures to have done so, because it is from the reapportionment act itself the States derive their authority to lay out congressional districts, and not from the Federal Constitution. Hence, Congress can delegate such authority either to the legislatures or to the governors of the several States.—*Extracts, see 2, page 64.*

Reapportionment Under Estimated Population of the U. S. in 1930

Table Showing How the 435 Members of the House Will be Distributed by the Method of Major Fractions

States	Estimated population Jan. 1, 1930	Present House of Representatives	Apportionment on basis of estimated population Major fractions	States	Estimated population Jan. 1, 1930 ¹	Present House of Representatives	Apportionment on basis of estimated population Major fractions
United States	122,537,000	435	435	Montana	548,889	3	3
Alabama	2,612,000	10	9	Nebraska	1,428,000	6	5
Arizona	499,000	1	3	Nevada	77,407	1	1
Arkansas	1,978,000	7	7	New Hampshire	458,000	2	2
California	4,755,000	11	17	New Jersey	3,919,000	12	14
Colorado	1,116,000	4	4	New Mexico	402,000	1	1
Connecticut	1,717,000	5	6	New York	11,755,000	43	43
Delaware	248,000	1	1	North Carolina	3,005,000	10	11
District of Columbia	572,000	0	0	North Dakota	641,192	3	3
Florida	1,489,000	4	5	Ohio	7,013,000	22	25
Georgia	3,258,000	12	12	Oklahoma	2,496,000	8	9
Idaho	567,000	2	2	Oregon	923,000	3	3
Illinois	7,555,000	27	27	Pennsylvania	10,053,000	36	35
Indiana	3,220,000	13	11	Rhode Island	736,000	3	3
Iowa	2,433,000	11	9	South Carolina	1,896,000	7	7
Kansas	1,847,000	8	7	South Dakota	716,000	3	3
Kentucky	2,577,000	11	9	Tennessee	2,531,000	10	9
Louisiana	1,977,000	8	7	Texas	5,633,000	18	20
Maine	800,000	4	3	Utah	545,000	2	2
Maryland	1,645,000	6	6	Vermont	352,428	2	1
Massachusetts	4,367,000	16	15	Virginia	2,622,000	10	9
Michigan	4,754,000	13	17	Washington	1,628,000	5	6
Minnesota	2,781,000	10	10	West Virginia	1,770,000	6	6
Mississippi	1,790,618	8	6	Wisconsin	3,009,000	11	11
Missouri	3,544,000	16	15	Wyoming	257,000	1	1

¹ As revised February, 1928, on 1920 to 1927 data.

² Population Jan. 1, 1920; no estimate made.

³ Population State census 1925; no estimate made.

It must be remembered that these estimated populations are merely guesses and may be far from the actual population as may be reported in 1930.

It will be observed that 534 is the number to which the House would have to be increased so that no State would lose a Member.—*Extracts, see 1, page 64.*

Apportionment Methods Described

By DR. JOSEPH A. HILL

Assistant to the Director of the Census



WOULD like to say a few words about the circumstances which have brought the question of method of apportionment up at this late date in our history, 140 years after the adoption of the Constitution and after Congress has made 11 successive apportionments. It would seem as if the question of the method of apportionment ought to have been definitely settled by this time, and some may have the impression, possibly, that this question has come up because some statistician or mathematician, not content to let well enough alone, has exercised his ingenuity in devising a new and original method which, naturally, he would like to have approved and accepted.

The Alabama Paradox

But that is not quite the situation. This question has come up for a very good reason, a much better reason than that. It has come up because the standard method which was adopted in 1830 and which was followed by Congress in making the apportionments, from that time down to 1900, inclusive, developed a defect, which created quite a surprise when it first came to light, the defect known as the Alabama paradox. That defect first appeared in 1880.

When the people in the Census Bureau made up the apportionment tables for 1880, they found that, when they apportioned 299 Representatives among the States, Alabama would receive, under the rule of 1850, eight Representatives. When they increased the number to 300 Representatives, again applying the rule of 1850, they found that Alabama would receive seven Representatives. That was something of a paradox and an anomaly, and no one knew exactly what to do about it.

The Maine Incident of 1900

I do not think the defect appeared in 1890, but in 1900 it came up again in a very aggravated form. It came up in the case of the State of Maine at that time, and they found that, following the rule of 1850, when they apportioned 383 Representatives, Maine under that rule received four Representatives. It retained four in the apportionment of 384 and 385 Representatives, but when they apportioned 386 Maine's quota went down to 3, and came back to 4 when the total number was 387 and 388. It dropped back to 3 when the total was 389 or 390, and then came up to 4 when the total reached 391 and stayed there thereafter. I recollect that Representative Littlefield, of Maine, who naturally was interested, remarked that "It seemed to be a case of now you see it and now you don't."

The Vinton Method of 1850

Under the rule of 1850, sometimes called the Vinton Method, they started out by computing the exact mathematical amount of representation to which each State would be entitled on the population basis, always involving a fraction, as we know. Adding to the whole numbers in the quotas the total of course came somewhat short of the total number of Representatives to be apportioned. There would be some left over, and they apportioned those left over in the order

of the size of the fractions until they had given out all the Representatives. The method might use up all the major fractions, or it might come short of that, or it might use all the major fractions and one or two minor fractions.

Professor Willcox Advocates Major Fractions

On the face of it, it seemed to be a very reasonable rule, and I do not think anybody would have questioned it if it had not been for this so-called Alabama paradox. But for that Congress in all probability would have continued to apply that rule indefinitely and we would never have heard of the method of major fractions or the method of equal proportions. But that defect so discredited the Vinton system that we could not keep on following it with a clear conscience. It was absolutely necessary to find a different method; and that is the reason why this subject was taken up, after the census of 1900, by two or three men and given so much study. It is the reason why Professor Walter F. Willcox, of Cornell University, and I, who were associated at the Census at that time in the division of methods and results, which prepared the apportionment tables, took up the study of the subject. He went back to Cornell shortly thereafter, but when the time came for making the apportionment of 1910 he came forward as the advocate of a method which had been deliberately applied once before, and once only; and that was back in 1840. He introduced some improvements in the method so as to facilitate its application to any number of Representatives, and gave it the name, method of major fractions.

Dr. Hill Favors Equal Proportions

My studies of the subject led me to a different conclusion. I came to the conclusion that the right principle was the one which is the basis of the method of equal proportions; but the method of equal proportions had not been devised then, and I worked out a method of my own which I called the method of alternate ratios. It was based on that same principle, but in the application of that principle there was a minor defect which I did not perceive at the time, Professor Huntington took this subject up at my suggestion, indirectly, and worked out the method of equal proportions, which is a logical and consistent application of the same principle that I had tried to apply.

Comparison of Methods

Now, as to the merits of the two methods, I might say a word. The method of major fractions perhaps has the merit of greater simplicity. I am not sure of that, but it has a certain popular appeal because it seeks to apply to the apportionment of Representatives a principle which is very commonly applied in other matters, particularly in practical affairs; the principle, namely, of counting a remainder of more than half as a unit and of dropping the remainder of less than half.

We apply that principle constantly in the Bureau of the Census, and it is applied in practical affairs. If I owed a man a debt of \$47.68 and when we came to settle we did

not have any small change, we would agree probably that it was fairer for me to pay him \$48 than \$47 as \$48 is more nearly the amount of the debt I owed him than \$47. In other words, it is better for me to sacrifice the 32 cents that I do not owe him than for him to sacrifice the 68 cents that I do owe him. That is not an unusual adjustment and seems to be sensible and logical.

I have said, however, that the method of major fractions, it seems to me, does not apply that principle consistently.

I will now briefly define or rather describe the operation of and principle underlying each of these methods.

Rejected Fractions

Under this formula all fractions are rejected. If, for instance, the apportionment of Representatives among the States is 1 for 250,000 population, a State with a population of 2,749,000 people would be assigned 10 Representatives, or 1 for each complete bloc of 250,000, but would not get any additional Representative for its fraction of 249,000. This method was used in all apportionments prior to 1840.

Equal Proportions

(1) In making an apportionment by the method of equal proportions the first step is to assign one Representative to each State, thus fulfilling the requirement of the Constitution that each State shall have at least one Representative. This disposes of 48 Representatives.

(2) The next step is to divide the population of each State by the following quantities in succession: $\sqrt{1 \times 2}$, $\sqrt{2 \times 3}$, $\sqrt{3 \times 4}$, etc.

(3) The quotients thereby obtained are arranged in order of size, beginning with the largest, to form what is called a priority list, which indicates the order in which Representatives in excess of 48 shall be given out to the States. Representatives are then assigned in that order until the required number has been given out.

The above process produces a result in which the necessary deviations from exactness are as small as possible when measured by the relative or percentage difference in either the ratio of population to Representatives or the ratio of Representatives to population.

Prof. E. B. Huntington, of Harvard University, who originated the method of equal proportions, describe his system—as the only method which insures that (1) the ratio of population to Representatives, and (2) the ratio of Representatives to population, shall be as nearly uniform as possible among the several States.

On account of fractions or remainders in the exact quotas a mathematically exact apportionment according to population is impossible. That being the case the aim should be to make an apportionment in which the necessary deviations from a mathematically exact apportionment shall be as small as possible.

It is evident, then, that the essential difference in the two methods is in the mode or method of measuring deviations or divergencies from exactness, the method of equal proportions using as a measure the relative or percentage difference in either of the ratios while the method of major fractions uses the absolute or subtraction difference in the ratio of Representatives to population.

Major Fractions

This plan rests on finding a ratio which will divide the population of each State so as to give a certain whole number and a certain fraction in each quotient. The plan rests on the theory that a Representative should go to each State for each unit in the quotient, and also for each fraction above

0.50 in the remainder. It may be otherwise defined as a method by which the absolute differences between the several States in the number of Representatives per inhabitant are made as small as possible. That is what the method of major fractions is designed to accomplish in the end.

As laymen understand the term, the major fractions method operates in a general way, as follows:

If, for instance, representation is apportioned on the basis of 1 Representative for every 250,000, then a State with a population of 2,626,000 would be entitled to 10 Representatives for the first 2,500,000 population and an additional Representative for the remaining 126,000 population, because the fraction or remainder, 126,000 is more than one-half of 250,000 the unit or basis of representation. But mathematicians and economists have extended and refined this so-called major fractions formula by mathematical processes in which certain quotients are arrived at and which are used as the basis for apportionment and which are different from the exact quotas to which the several States are seemingly entitled, and as a result of this refined method frequently a State with a larger major fraction is not allowed an extra Representative and a State with a smaller fraction is given an additional Representative. Major fractions method is supposed to apply the principle of counting the remainder when it is more than one-half of the unit or basis of representation, but in its practical application this is not necessarily done, as for illustration in apportioning representation in the 1910 census major fractions were disregarded in apportioning Representatives to Mississippi, New Mexico, Ohio, and Texas, the exact quotas of these four States being "scaled down" by mathematical processes, and States with smaller major fractions given extra representation. The method of major fractions was used twice, in 1843 in apportioning representation under the 1840 census, and in 1911 in apportioning representation under the 1910 census.

The major fractions formula used under the 1910 census was devised by Dr. Walter F. Willcox, of Cornell University, and is an amplified form of the major fractions method used under the 1840 census.

The Method of Equal Proportions

Here, as in the method of equal proportions:

(1) The first step is to assign 1 Representative to each State, making 48 in all.

(2) The next step is to divide the population of each State by the following quantities in succession: $1\frac{1}{2}$, $2\frac{1}{2}$, $3\frac{1}{2}$, etc.

(3) The quotients thereby obtained are then arranged in order of size, beginning with the largest and continuing the process until the total number of quotients plus 48 is 1 greater than the number of Representatives to be apportioned.

(4) The next step is to divide the population of the several States by a number midway between the last two quotients in the list.

(5) The last step is to assign to each State a number of Representatives equal to the whole number in the quotient which was obtained for that State by the above division plus one more Representative in case the quotient contains a major fraction.

This process gives a result in which the necessary deviations from exactness are as small as possible when measured by the absolute or subtraction difference in the ratio of Representatives to population.

The Vinton Method

Under this method, named for Representative Vinton, who proposed it, the total population of the United States is divided by the number of Representatives to be apportioned.

This gives the ratio or number of inhabitants per Representative. The population in each State is then divided by that ratio number. The result represents the exact quotas, and taking these quantities, you assign Representatives in the order of the size of the fractions. For instance, suppose there were 10 Representatives to be assigned for fractions, the first Representative would be given to the State with the largest fraction, and the next to the State with the next largest fraction, and so on until all the Representatives were allocated. This process might use up all the major fractions and no more; or it might not use up all these major fractions; or it might use up all the major fractions and one or two minor fractions. This method was used in apportioning representation from 1850 to 1900, inclusive.

The Advisory Committee of 1921

In 1921, when the Senate Committee on the Census was considering an apportionment bill based on the 1920 census, its chairman, Senator Sutherland, received a communication from the census advisory committee, which had been appointed to advise the Director of the Census on technical questions coming up during the taking of the 1920 census. This committee was composed of three representatives from the American Statistical Association and three representatives from the American Economic Association. The members of this committee were C. W. Doten, E. F. Gay, W. C. Mitchell, E. R. A. Seligman, A. A. Young, and W. S. Rossiter, all eminent statisticians and economists. In its detailed and well-considered report, which was unanimous, the committee of experts analyzed the methods of major fractions, equal proportions, and other suggested formulas, explained the principle, operation, strength, and weakness of each plan, and reached the following conclusions:

1. The "method of equal proportions" leads to an apportionment in which the ratios between the representation and the population of the several States are as nearly alike as it is possible. It thus complies with the conditions imposed by a literal interpretation of the requirements of the Constitution.

2. The "method of major fractions" has back of it the weight of precedent. Logically, however, it can be supported only by holding that the Constitution requires, not that the ratios between the representation and the population of the several States shall be equal, as nearly as is possible, but that the representation accorded to individuals or to equal groups of individuals in the population (that is, their "shares" in their respective Representatives) shall be as nearly uniform as is possible, irrespective of their places of residence.

3. It is not clear that the special interpretation of the Constitution, which alone is consistent with the use of the "method of major fractions," is to be preferred to other possible special interpretations which lead to other methods of apportionment. We conclude, therefore, that the "method of equal proportions," consistent as it is with the literal meaning of the words of the Constitution, is logically superior to the "method of major fractions."

The Committee Report

The advisory committee concluded its elaborate report with the following summary:

1. It is clear that the Constitution requires that the allocation of Representatives among the several States shall be proportionate to the distribution of population. It is not equally clear that there is anything in the constitutional requirement which suggests that one of the forms in which such apportionment ratios or proportions may be expressed should be preferred to another.

2. The "method of major fractions" utilizes only one of several ways of expressing apportionment ratios. The "method of equal proportions" utilizes all of these ways without inconsistency. The latter method, therefore, has a broader basis.

3. There is no mathematical or logical ground for preferring the one form of expression of the apportionment ratio used in the method of major fractions to other forms of expression. These other forms lead, when similar processes of computation are employed, to different and therefore inconsistent results.

4. The method of major fractions logically implies preference for a special meaning which may be attached to one of the forms in which apportionment ratios may be expressed. To attach to ratios meanings which vary with the forms in which the ratios are expressed is to interpret them as something else than ratios.

5. In the "method of major fractions" the "nearness" of the ratios of representatives and population for the several States is measured by absolute differences. The "method of equal proportions" utilizes relative differences. The relative scale is to be preferred.

Conclusion

In conclusion, on the basis of what I have said I might frame a definition of the three methods I have mentioned, including the method of minimum range. I am defining not the mathematical process of the methods but the purpose each method accomplishes.

The method of major fractions is the method by which the absolute differences between the different States in the number of Representatives per inhabitant are made as small as possible. That is what the method of major fractions accomplishes in the end.

I will define the method of minimum range as the method by which absolute differences between the several States as measured by the number of inhabitants per Representative are made as small as possible.

The method of equal proportions is the method by which the relative or percentage differences, in either the number of inhabitants per Representative or the number of Representatives per inhabitant are as small as possible.

Those are technically correct definitions. I might say more about the third method.

The Three Methods Compared

Comparing the three methods, the method of equal proportions is more—I will use the word favorable—is more favorable to the small States than the method of major fractions and less favorable than the method of minimum range.

The method of equal proportions is more favorable to the large States than the method of minimum range and less favorable than the method of major fractions. Thus, it occupies an intermediate position between the other two.

The practical results of the application of the three methods may therefore be summed up as follows: If it be desired to have a method which shall be as favorable to the large States as possible then the method of major fractions should be used. If it be desired to have a method that will favor the small States as much as possible, then the method of minimum range should be used. If it be desired to adopt a method intermediate between these two, not as favorable to the large States as the method of major fractions, nor as favorable to the small States as the method of minimum range, then the right method is the method of equal proportions.

Provisions of the Census Bill

By Hon. J. Hart Fenn

Chairman House Committee on the Census

EDITOR'S NOTE:—The bill providing for the taking of the Fifteenth and subsequent decennial censuses (H. R. 393) was passed by the House on May 21, 1928, and reported to the Senate with amendments by the Senate Committee on Commerce, December 12, 1928. It is on the Senate Calendar awaiting action. The bill carries a total appropriation for the fiscal years of 1930, 1931 and 1932 of \$39,493,000.

Under the provisions of the bill the census of the population is to be taken as of November 1, 1929. The bill as passed by the House provided that the census of population be taken as of April, 1930. The reasons for opposing the 1929 date are set forth by Representative Fenn in the following article:



HIS bill is in the main a reenactment of the law approved March 3, 1919, providing for the fourteenth and subsequent decennial censuses. Certain modifications of that law are necessary to meet present conditions, and these changes have been made. The bill provides for a census of population, agriculture, irrigation, drainage, distribution, and mines. It also reenacts the laws that provide for a census of agriculture every fifth year and a census of manufactures every second year.

The subjects covered are the same as those covered in the laws for preceding census with the exception of "distribution," which has been added for the purpose of collecting data on a very important feature of the commercial development of the country. A study of the economic history of the United States leads inevitably to the conclusion that greater attention must be paid to our internal markets. The bill therefore provides for a census of distribution to cover mercantile establishments and wholesale and retail trade. The committee consulted a number of authorities on this subject and the consensus of opinion was that distribution is a subject on which statistical data are at present very inadequate or almost wholly lacking. Any information that will assist to a better knowledge of markets and trade conditions in the United States will go far toward forestalling violent industrial and business fluctuations. President-elect Herbert Hoover has emphasized the importance of covering this field of statistical inquiry.

Certain administrative details incorporated in the law for the Fourteenth Census have been omitted. The committee is of the opinion that the inclusion of such details in the law is a mistake which in the past has more often hampered than helped the work of taking the census. It is believed that it is the part of wisdom to leave most of these questions of administrative details to be determined by the Director of the Census, the official charged with the responsibility of taking the census.

Those provisions of the previous law which specified the questions to be included in the census schedules have not been retained. There are certain standard questions which have been carried in all censuses, such as age, sex, marital condition, nativity, and occupation. These questions will be continued. Any population census that omitted them would be defective. But there are a large number of other questions that have been proposed for inclusion in the census, and there is grave danger of overloading the schedules so that the census will break down from trying to cover too much detail. It must not be forgotten that after all the primary purpose of the census is to get a correct enumeration of the population which must be shown for every State, city, county, township, precinct, and ward. The population schedule of the last census contained 29 columns in which the enumerator had to make entries. It is the opinion of those familiar with census work that the schedule can not safely be ex-

panded. It has reached the limit of practicability so that if new questions are to be added some of the questions already there must be omitted. To meet this situation, the bill provides that the questions in the schedules used to take the census shall be determined by the Director of the Census with the approval of the Secretary of Commerce. This provision is included on the understanding that it is the policy of the Department of Commerce in making an investigation of this character to confer with persons, governmental employees as well as others, who are familiar with the different subjects, and that questionnaires will be prepared to develop the facts which are of prime importance and omit those that are not essential.

After conferring with and obtaining the approval of the Postmaster General the House committee incorporated a provision that in order to meet exigencies and under certain restrictions employees of the Post Office Department could be utilized in making the enumeration of outlying districts.

During the hearings of the committee it developed that the rates of pay established in the law for the Fourteenth Census were so inadequate that it seriously hampered and delayed the work of enumeration. Provision was included in this law, therefore, that the census employees, special agents, supervisors, supervisors' clerks, enumerators, and interpreters should receive compensation at per diem or piece-price rates to be fixed by the Director of the Census. Such a provision is in conformity with other laws and regulations affecting temporary work of this character. This provision gives necessary flexibility to the authority of the Director of the Census which is essential to the proper conduct of the work, permitting him to adjust the compensation of the field force to meet conditions existing in widely separated localities.

Those provisions of the law making it obligatory upon the enumerators and other employees to prosecute their duties in an orderly and efficient manner, and imposing certain penalties for their failure to do so, are retained. The committee has also retained those provisions that impose penalties for the refusal of individuals, companies, and corporations to furnish information essential for their proper enumeration. The provisions of law imposing penalties upon the Director of the Census or any other employee who divulges confidential information furnished for census purposes are also retained.

The bill as originally drafted provided for taking the census of agriculture in November, 1929, and the census of population in April, 1930. But after considering all phases of the subject and hearing many witnesses on this question the committee is of the opinion that it is beyond question more economical and probably more effective to make the enumeration of population and of agriculture as of the same date.

The committee is of the opinion that the enumeration of

Continued on page 64

How Foreign Parliaments Compare with U. S. Congress

Legislative Bodies of Great Britain, Germany, France, Italy and Canada Have Larger Memberships with Smaller Constituencies.



THE English House of Commons has a membership of 615, although the United Kingdom of England, North Ireland, Scotland, and Wales has only a population of 43,000,000. The House of Representatives of the United States has 435 Members, based on a population of 105,000,000 in 1910. Every member of the English House of Commons represents 71,293 constituents, while on an average every Congressman represents 242,267 constituents.

The French Chamber of Deputies has a membership of 580. France has a population of 39,000,000. On an average of every Deputy in France represents 67,603 constituents.

The Reichstag, the popular branch of the German Government, has a membership of 493. Germany has a population of approximately 60,000,000 people and every member of the German Reichstag represents 121,405 constituents.

The Italian Chamber of Deputies has a membership of 560, and with 39,000,000 people in Italy, each Italian Deputy represents 74,966 constituents.

Canada, with a population of 9,000,000, has a membership

of 245 in its House of Commons, every member of which represents, on an average, 37,396 constituents.

In other words, when you consider the population of the United States, the American Representative must look after the interests of 242,267 constituents while the number of the English House of Commons is only required to look after the interest of 71,293 constituents; the French Deputy must look after the public business of 67,603 constituents; the German representative has a constituency of 121,045; the Italian Deputy has a constituency of 74,966, and the Canadian representative is only required to look after the public business of 37,396 constituents.

It may be interesting to add that the Senate is numerically smaller than the similar legislative bodies in other great nations. The United States Senate has a membership of 96. The French Senate has a membership of 300. The Upper Chamber of the Italian Parliament has 416 members. The Reichstag, the upper house of the German Parliament, has a membership of about 68, while the English House of Lords has a voting strength of 720. It follows, therefore, that the membership of the American House of Representatives and Senate is comparatively small and not too large or unwieldy.—*Extracts, see 3, page 64.*

A Brief Chronology of Congressional Reapportionment.

Continued from page 34

the two preceding apportionment acts, made no mention of a ratio.

1910—The thirteenth census was taken, population 91,972,266.

1911—Congress passed an act approved August 8, increasing the membership of the House to 435.

1920—The fourteenth census of population was taken as of January 1, and the Director of the Census, submitted the figures of the total population of the United States to Congress on October 7, population 105,710,620.

During the Sixty-sixth Congress, third session, the Committee on the Census reported H. R. 14498, a bill providing that after the 3d day of March, 1923, the House of Representatives shall be composed of 483 members. Under that apportionment no State would have lost a member.

1921—This bill as amended, provided for a House of 435 members, passed the House on January 19, but the Senate failed to act upon it before the close of the session.

During the Sixty-seventh Congress, first session, the Committee on the Census reported H. R. 7882, a bill providing

that after the 3d day of March, 1923, the House of Representatives shall be composed of 460 members. Under this bill Maine and Missouri each would have lost a member. An effort to amend this bill to read 435 failed. A motion to recommit this bill to the committee was agreed to by a margin of four votes, and no further action was taken by the committee.

The Committee on the Census did not report a bill during the Sixty-eighth Congress.

During the Sixty-ninth Congress an effort was made on the floor of the House to take up reapportionment as a privileged question and discharge the Committee on the Census from consideration of H. R. 111. The speaker submitted the question to the House for its determination. The House by a vote of 87 yeas and 265 nays determined that the consideration of this bill was not in order.

1927—On March 3, a motion was made to suspend the rules and pass H. R. 17378, a bill providing that after the 3d day of March, 1933, the House of Representatives shall be composed of 435 members, but this motion was defeated by a vote of 187 yeas and 199 nays.

Should House of Representatives be Held to Its Present Size?

Pro

HON. CARROLL L. BEEDY,

U. S. Representative, Maine, Republican



AM very much in favor of that provision of the reapportionment bill which limits the size of the House to 435 Members.

In fact, I have gone so far as to say that if I could in any way be helpful in reducing the size of the House for all time I should be glad to yield my seat and retire from public life. My reason is this: I am well aware of the fact that the House of Deputies in France and the House of Commons in England is much larger than ours, and I am also well aware of the fact that by the rules of procedure which the House has adopted we are able to transact business in an expeditious manner, but we have secured this expedition in the transaction of public business at the expense of the representative character of the House.

I think all of us will freely concede that so far as any constructive work on the floor of the House is concerned, none of us can really represent our constituents. Now, what do I mean by that? I mean this, and it was a most distressing fact to me when I first entered upon my career here: The legislation of the House is molded in practically its final form before people in general or even the Members of the House, as a whole, come to know anything about it. Very few people in my district in the six years I have been here have known anything about legislation pending before any committee of which I have been a member, and if they have been interested in it at all, their attention has rarely been called to it until it was ready for consideration by the House. At such a stage I have received letters requesting me to have a bill amended in this, that, or the other respect.

At all times I have been perfectly frank to say that it is practically impossible to secure an amendment on the floor of the House to any legislation; that ninety-nine times out of a hundred the legislation is passed just exactly as it is reported to the House. Members are unable to attend the House sessions always. There are times when they are busy in committees when the House is in session, and for one reason or another they are unable to be on the floor. Committee of the Whole proceeds to discuss the legislation pending and if a really important amendment is offered when the bill is being read under the five-minute rule, there is a call of the House, the vote is put, and the majority of the Members simply ask, "What is this amendment all about? What does the committee desire?" And they vote as the committee desires. There is no claim under such circumstances that Members can really represent their constituents.

The House is already so large that it is no longer a representative body. Because of its size it is impossible to permit real consideration of legislative proposals. That is only possible in committee rooms. Hence, I repeat that the great mass of people are unable through their Representatives to secure desired amendments to legislation in the House.

Under the present methods of procedure there is no way of getting word back to the majority of the people in any one district as to what is transpiring here.

Continued on Next Page.

Con

HON. RALPH F. LOZIER,

U. S. Representative, Missouri, Democrat



CANNOT refrain from expressing my conviction that in the interest of popular government and efficient translation of the public will into legislation it is necessary to increase the membership of the House. Under our system of procedure in the House and with our Committee on Rules and our steering committee of the majority party a House of 500 or 600 Members would not be unwieldy. This system of legislative procedure is so well entrenched in the House and functions so efficiently that the addition of 50, 75 or even 100 or more Members would not militate against the expeditious dispatch of legislation in the House. It will not be denied that the House with a membership of 435 functions more efficiently and enacts legislation more promptly than the Senate, which has a membership of only 96. Nine times out of ten the delay in enacting legislation occurs in the Senate and not in the House, and the defeat of legislation demanded by the public is generally brought about by the action of the Senate and not by the action of the House.

Again, with the tremendous increase in our population, the enormous development of our industrial and commercial activities, the creation of innumerable commissions, bureaus and departments of Government, the participation of the Government in business and the active interest of business in government—all these conditions have combined to bring about a situation where the departmental business of the average Congressman has increased very greatly over what it was in the past, and over similar official activities of the members of legislative assemblies in foreign countries.

The rapid and enormous extension of the activities of our Federal Government in new fields, the ever-increasing participation of business in government and the enormous increase of Government business has added several hundred-fold to the labor and responsibilities of a Member of Congress, who is the agent and should be the dependable spokesman and representative of his constituents in the true sense of that term. The Member of Congress is the instrumentality by which his constituents get in contact with the Government on matters involving not only legislation and taxation, but pensions, post office, and Rural Free Delivery Service, veteran legislation, departmental matters, and scores of other agencies that touch and materially affect the interest of the people; and while Congress in recognition of the increase of departmental duties has increased the clerical force of Representatives and Senators, nevertheless much of this work must come under the immediate and personal supervision of the Member of Congress, and much of it cannot be delegated or instructed to his clerical force. The people have a right to demand that their business with the Government have the personal attention of their Congressman, because of his ability to get better results for them than if the matters in which they are interested are left to the attention of a clerk or secretary. Undoubtedly the smaller the legislative body the more easily it can be controlled by the sinister and sordid interests and the more

Continued on Next Page.

Pro

HON. CARROLL L. BEEDY—*Continued.*

Now, your party may be in control of the committees of the Congress, and many majority measures may be submitted to the proper committees. You have an opportunity to write home the proposals involving some questions which have not been threshed out in the preceding campaign—but at best you can notify only your district leaders. Whatever party is in power, I contend it is impossible for a Member of the House to inform the average constituent as to what legislation is being proposed before committees, and when it gets to the floor of the House it is useless to write into the proposed law the wishes of the people.

Now, my thought is, if ours is to be as nearly as possible and practicable a representative government, that the more we can drag the legislation out on the floor of the House and discuss it and get reports of that discussion back to our people, the more truly may the House membership be representative.

One must concede at the outset that a representative form of government is a cumbersome form of government. But we are committed to that form of government, and if the lower branch of the Congress is to be representative in fact, I believe we must limit its membership. I deplore the fact that the House, because of its present size even, is no longer a deliberative body.

While I concede that we are all busy in the House and it is difficult for us to know everything that is going on, my point is not that the individual Member of the House is so busy that he is unable to inform himself on legislation; my point is that the average Member of the House—there are so many of us—that the average Member of the House does not have any chance to discuss general legislation on the floor of the House or in any way or manner bring it to the attention of his constituents with any possible hope of writing into the legislation the wishes of the average man or woman. I have always had ample opportunity to voice my views in Committees but not in the House proper.

The more Members you have in the House the more impossible it becomes for the House, as such, to deliberate in any way on pending legislation and the greater the burden to be imposed on the committees.

Under the present rules and procedure a somewhat larger House would not necessarily make for inefficiency. What I am talking about is the representative character of the House, and the ability of the individual Member to really represent his constituents in any session of the House itself. The present restrictive rules have been made necessary by the increasing size of the House. If the size of the House were to be reduced the rules of the House would be so liberalized as to permit real deliberations with resulting enactment of laws more truly reflecting the public will than is now the case. Each time the membership of the House is increased, the individual Member loses a proportionate opportunity to represent his constituents on the floor of the House; each Member becomes a smaller cog in the big wheel.—*Extracts, see 4, page 64.*

Con

HON. RALPH F. LOZIER—*Continued.*

readily it will yield to corrupt appeals and venal influences.

By increasing the membership of the House, within reasonable limits, of course, you will draw "fresh blood" from the country—men who come fresh from the people who know the needs of the people, and who have the courage and ability to champion the cause of the masses. If we should add 75 to the House membership and if this increase would bring into the Government service two or three men with genius for government and legislation, would not the acquisition of the brains of these two or three new Members and the employment of their genius in legislative matters be worth infinitely more to the Government and to the people than the entire cost of such increase in membership?

If popular government is to be successful, it is absolutely necessary to interest the masses in governmental matters and in voting, and they should know their Representatives.

And that result will be brought about more easily by not having a Representative in Congress represent too many people or too large an extent of territory. The arguments against the increase of the membership of the House are arguments against large legislative assemblies. It is true that in all the history of the world since people began to strive for popular government, bureaucrats and those who did not believe in the masses having a voice in governmental matters, have always been opposed to large representative assemblies, and attempted in all nations and in all ages of the world's history to confine governmental activities to a favored class, to the highborn, or at least to a small body of men that could be more easily controlled than large legislative assemblies.

I think that a study of the history of the world shows that those who have been opposed to popular government have always used the argument that the masses were not capable of self-government, and that a large legislative assembly can easily be converted into a mob. In that connection I call your attention to the fact that this very question was discussed in the Constitutional Convention, and it was there argued very convincingly that the success of free government would largely depend upon having a large representation from that State. While you cannot be any sycophant drawn from all parts of the country, directly from the people, so that all vocational groups would at least have a fair representation in Congress.

And with the tremendous increase in our commercial and industrial population, if the membership of the House be confined to 435, in each succeeding census and apportionment, the representation of the agricultural States and agricultural groups will become less and less in each succeeding reapportionment, until ultimately the numerical representation of the agricultural classes will be nominal and negligible.

To illustrate: If the formula of 435 is adhered to, I believe in 25 years the cities of St. Louis and Kansas City, and their environs, on a population basis, would send to Congress at least three-fourths of the total number of Representatives from that State. While you cannot by any system prevent this disparity, you can adopt a system which will give to each vocational group a fair and just numerical representation, and it is important that every group, every vocational class, have such numerical representation in the House as may be reasonably necessary to protect the interests of each and every vocational group.—*Extracts, see 5, page 64.*

Should a Reapportionment Bill Be Passed Before 1930?

Pro

HON. CLARENCE J. McLEOD

U. S. Representative, Michigan, Republican



MEMBERS of Congress can not avoid being reminded that for eight years Congress has permitted a condition to continue which has never before existed in the 133 years of our constitutional history. There are many duties imposed upon us by the high office in which we have been placed by trusting constituents. Many of these are significant and urgent. There are other duties which do not have the appearance of urgency, but which transcend all others, because they pertain to that fundamental principle upon which the Government has been founded; namely, the Constitution.

Now, I do not desire to attempt to elaborate on the Constitution, nor to condemn individuals who, in my opinion, have gone beyond the scope of their rightful duty in Congress, on the committee of which I am a member.

I can not follow the mental gymnastics of those who say that this language does not mean that Congress must apportion its seats every 10 years. Such interpretation does not appear to me to be reasonable, and I am convinced that on this proposition I stand with the great majority of legal authorities, as well as with the great body of American people.

But regardless of the technical legal power conferred upon the Congress, it has the ability, by merely failing to act, to let apportionment go by the board, and there is no power to enforce the higher authority of the Constitution. I say there is no power; that is, there is no statutory penalty for not obeying. But there is a moral obligation backed by the weight of public opinion.

The present reapportionment bill removes the possibility of violating the Constitution, by mere nonfeasance of Congress. It provides for an automatic performance of the purely administrative features of reapportionment, reserving to Congress in each instance, after a census, a prior opportunity to apportion its Members by positive action if it so desires.

The Constitution, so long as it truly embodies the will of the sovereign people, must be enforced. This bill will make it very difficult in the future to permit the growth of such insidious disfranchisement as has been in operation against several of the great States of the Union during the past eight years. I am strongly in favor—and I am sure a great majority will admit the wisdom of—a measure which accomplishes that result. It is the only way to safeguard the future against usurpation of the Government, consciously or unconsciously, by unyielding minorities.

Congress does not have the right to say what is best for the country in violation of the Constitution. One hundred and fifty years ago George III of England disregarded the rights of his subjects as manifested in their constitution. The result was a war of independence and the birth of a new nation. The grievance which stands out in our minds as the battle cry of that struggle is, "No taxation without representation."

The spirit of that slogan won the war, and impelled the

Continued on next page

Con

HON. JOHN E. RANKIN

U. S. Representative, Mississippi, Democrat



I AM one of those men who have been charged with responsibility for not reapportioning under the census of 1920. I plead guilty to that charge.

I said on this floor in 1921 that I was opposed to the reapportioning of the House under the census of 1920 for several reasons. In the first place, the census of 1920 was taken, you might say, while America was still in the World War; when our soldiers had not returned to their homes: when thousands and thousands of them were away from home and were not counted where they should have been counted. I was opposed to it also because of the fact that the census was taken at a time when, owing to war activities, the population of a good many States had been drawn away from home and concentrated in the large industrial centers of the country.

I was opposed to it because the Bureau of the Census for the first time in the history of this country, undertook to take the census in the wintertime, when the roads were muddy, when the weather was bad, and when it was almost impossible to go into the agricultural sections and make a correct tabulation of the population. I was opposed to it because it was taken at the time of the very peak of high prices. It was shown before the committee, in the former hearings on this bill, that they found it impossible to get men at the prices paid to go out and do this work.

As a result they brought in a census which showed an abnormal gain, an unreasonable gain, if you please, in the large congested industrial centers and at the same time an unreasonable falling off in the agricultural sections.

I say this was brought about largely as a result of the World War, and as the result of the World War we smashed almost every precedent of which you can think.

In 1921, when this bill was brought before the House, I announced my attitude clearly. I was not in favor of increasing the membership of the House, and I think the record of the hearings will show I so stated, but in order to get this measure off our hands, I joined a majority of the committee and reported to this House a bill providing for a membership of 460, which would have taken care of all the smaller States, although it would have added a little more to the already inflated number which some States would have received. It would have taken care of all the smaller States with the exception of Maine, which would have lost one, and Missouri which would have lost one instead of two.

We debated that bill all day long. That night a motion was made to recommit, and it was recommitted by the votes of the very gentlemen from Michigan and California who now complain that we who tried to do justice to all on that occasion are responsible for the House not being reapportioned.

Now, these are the facts in the case and so far as I am individually concerned, I am willing to assume my part of the responsibility.

Continued on next page

Pro

HON. CLARENCE J. MCLEOD—*Continued*

founders of our Government to reduce to writing those principles of government which would forever prevent the usurpation of sufficient power by any man or group of men to tax citizens and at the same time deprive them of just and equal representation. And yet has not the failure of Congress to apportion the Representatives for a period of eighteen years produced just that situation?

The State of Michigan, which ranks fourth in total amount of income tax paid to the Federal Government, is forced to get along with the same number of Congressmen she had 18 years ago. The fact that Michigan, along with several other States, has had phenomenal growth in population and wealth during the last 18 years, while some States have not, has had no recognition at the hands of Congress.

Our forefathers, in their far-seeing wisdom, provided for the inequalities of growth which they knew must necessarily take place in this country. They were well aware that the process of usurpation is gradual and sometimes so imperceptible as not to be recognized for what it is. They could not conceive of a truly representative body in our Government, such as our House of Representatives, succumbing to this pernicious evil. Their problem, then, was to keep it representative.

Article I, section 2, of the Constitution was devised for that purpose, and given the leading position in the document, indicative of its preeminent importance. For unless the truly representative character of this legislative body is preserved, we will no longer have a representative form of government.

The authors of the Constitution had just previous to framing that document participated in the Declaration of Independence.

In order that the wisdom of our forefathers may be vindicated and the trust which they imposed upon the Congress be not destroyed, this bill should be passed.

The highest test which self-governed peoples have to meet is the unwavering administration of just laws, regardless of circumstances. This test can only be met so long as principles command respect and expediency is decried among those in high places.

Our forefathers set up a constitutional form of government which has served ever since as a model of government for struggling freeman. We have proved highly capable up to this point of governing ourselves under this Constitution, and have continuously urged other peoples who have had the opportunity to subscribe to the correctness of our form of government to follow our example. Many have done so, and now it again falls to our lot to set an example. Where new conditions make the adherence to old principles unpleasant, we must set an example of moral courage. The crucial period of our national history is before us, when wealth and luxury are ours to master. We must not forget that our Government is an experiment in self-control on a large scale, and that obligation is directly upon Congress to keep us from deviating from the true course of good government. We must not lay ourselves open to the charge of rotten borough politics.

By providing now for reapportionment on the basis of the 1930 census, we are attempting to retrieve the honor and respectability of the Congresses sitting between the years 1920 and 1928 with regard to the census of 1920. Those Congresses have perpetrated a great wrong, a crime against the Constitution. Those who oppose reapportionment have set

Continued on page 57

Con

HON. JOHN E. RANKIN—*Continued*

Oh, but they say, "You have violated the Constitution." Now, as a matter of fact, reapportionment every 10 years is not mandatory under the Constitution.

I rather think the House of Representatives is large enough, but suppose in 1930 in working this proposition out Congress should find that by adding four or five Members or taking away four or five you can do justice to all the States? Will they say, "No; we are bound by this all-wise, all-powerful Congress that was in control a few years ago—they had a corner on the legislative wisdom, those patriotic fathers of the Constitution—they said it was 435, and we can not change it?"

You are fixing the House at 435, denying the next Congress if your law amounts to anything, if it is binding, you would be denying future Congresses the right to reduce or raise the membership of the House.

My idea is to leave this reapportionment off until after the census of 1930 is taken, because you are basing it on the census of 1930; and then when you take your census make your reapportionment on the basis of that census. We will have a bill coming up here on next Monday, I presume, by which we provide that the census must be taken as of the 1st of May, 1930. We are going to see that the people in the rural districts are counted and that a complete census is taken, if possible; and then I am in favor of reapportioning upon the basis of that census.

Let us not deceive ourselves by passing this unnecessary legislation to bind a future Congress, but let us wait until 1930 and see that the census is taken, and see that the men charged with that duty perform it, and see to it that they have sufficient money to insure that it is properly performed, and then come back here and reapportion Congress on the basis of the census taken in 1930 in order that we may do justice and not injustice to either the small or larger States.

In 1921 we brought in a bill, after we had toiled and worked and tried to iron out our differences, that would have changed the membership of the House from 435 to 460. Personally, I was not in favor of increasing the number in the House, and I am not now. But I supported that measure in order to get the proposition disposed of. After debating it all day it was recommitted to the committee by a majority of four votes. I was one of the men who voted against recommitting it, but the very gentlemen who have criticized us from that day to this voted to recommit and thereby killed the bill.

This bill does not reapportion at all. It is the most ignominious capitulation I have ever seen the House attempt to make, surrendering our prerogative of reapportioning the membership of the House and abdicating it to some clerk down in the Census Bureau. That is what you are doing. Not only that, but you are manifesting a most flagrant lack of confidence in the Hoover administration before it is even sworn into office. You are attempting to pass a bill to reapportion the House elected in 1932. This is not a reapportionment bill. It is an abdication bill. It is a bill to delegate the right to reapportion to the Secretary of Commerce or to the clerks down in the Bureau of the Census.

If I had no other reason for opposing this bill, this forecast of the population of 1930 which they have made would be sufficient to convince me of the inadvisability of it. To

Continued on page 57

Is the Reapportionment Bill Fair to Future Congresses

Pro

HON. JOHN Q. TILSON

U. S. Representative, Connecticut, Republican

WE are in danger, if this bill be not passed by this Congress, of going on indefinitely without a reapportionment just as we have done for the past eight years. As we go on decade after decade the differences in the proportionate increase in population of the several States will become more and more exaggerated, and by reason of having no reapportionment at all we shall find ourselves drifting into a form of government which is not in any true respect a representative government.

What does this bill do? It simply provides that in case the next Congress shall fail to reapportion the membership of this House, by any method it may choose, upon the census taken in 1930, then the method provided in this bill shall be used automatically, the membership of the House shall continue to be 435, the same number the House now has, and with this number as a basis, the 435 members shall be allocated to the several States according to the population as found in the 1930 census.

What could be fairer even as a purely sporting proposition? Each Member ought to say, "I am willing to take the chance with my State and if we have not grown proportionately with the others, then we must abide the consequences." This is all that we say or do in this bill. We are not usurping the authority of any future Congress. We are not delegating to any one power except a purely ministerial one. We are not putting this matter beyond the recall of the next Congress; in fact, we are inviting that Congress to perform its duty under the Constitution as the members composing it may see fit; but if they fail to do it—and Congresses have failed to do their duty in this respect—if the next Congress shall fail to do its duty, then by this act we have provided a guaranty against the consequences that could otherwise flow from the failure of that Congress to do its duty. It seems to me that there could be no fairer proposition.

We are not only not attempting to usurp the power of a future Congress, we are not in any wise reflecting upon the patriotism or good judgment of those who may make up that Congress. In fact, we are relying upon them, in case what we do here today should prove to be wrong, to correct it, and by the very language of this bill we are inviting them to do so. However, if they for any cause should fail to perform this function, as previous Congresses have done, then what we may do here becomes a matter of great importance which will save future Congresses from the stigma of having failed to perform a perfectly plain constitutional duty. And there are difficulties in the way of performing this function, as we all know, so that we should not be too hard upon any past or subsequent Congress, for quailing before these difficulties. It is not an easy matter to legislate one's self out of office or to deprive one's State of representation it has had hitherto. Sometimes, however, this must be done, unpleasant though it may be, and we in this bill provide as painless a method as it is possible to devise, in case there should be a failure to do it directly at the proper time. We have the satisfaction, too, that in providing this method we have furnished a guaranty that a fair apportionment will be made under the Constitution.—*Extracts, see 7, page 64.*

Con

HON. OTIS WINGO

U. S. Representative, Arkansas, Democrat

NOW, what does this bill do? It is very ingeniously drawn. It may get around the charge that we are delegating the legislative authority of Congress to an executive bureau. Perhaps, though I doubt it, you may get around that charge, so far as the letter of the Constitution is concerned, but you do violate the spirit of the Constitution. When I took an oath to support the Constitution I meant the spirit of the Constitution as well as the letter.

What is going to be done when this becomes a law? The Constitution provides that the reapportionment of the House shall be by the positive, affirmative action of Congress, does it not? Under this bill the reapportionment of this House depends not upon the affirmative but the negative action of the Congress. It provides that unless the next Congress, after the 1930 census, shall undertake to discharge its constitutional function by affirmative action then a bureau chief shall take its place and discharge the constitutional duty of that Congress. In such event, will reapportionment come by the affirmative action of Congress? No. It will come by the negative action of Congress, and, worst of all, by the affirmative action of a bureau chief, from whose decision there can be no appeal, save the judgment of the body that refuses to act. You may go off in that way if you want to and yield the prerogatives which affect the composition of the House itself to a bureau, but under my oath I can not do it.

Now, let us see what else. It makes it possible for this House to have this reapportionment determined by the negative action not of Congress—I have discussed that—but the negative action of a bureau chief. If he fails to file a certain statement on the first day of the Congress then the reapportionment will be one way; if he files it, it will be another way, and yet you tell me this does not violate the spirit of the Constitution? Well, I should hate to have my constitutional liberties depend upon the befuddled brain of a man who makes that kind of a distinction.

Chickens have a way of coming home to roost. I am going to make the prediction that some of the gentlemen who voted for this bill are going to have chickens come home to roost during their lifetime and that they will see the day when this very bill will plague them instead of being a blessing to them. You can not trifle with the spirit of the Constitution without paying the price, and you are trifling with the spirit of the Constitution.

In conclusion let me give my chief objection to the bill. It is an abject plea of cowardice and inefficiency upon the part of Congress. You by this bill say that Congressmen are either inefficient and incapable of discharging their constitutional duty or else they are too cowardly to do it. That was the confession, spread upon the record, of those who voted for this bill. That is my judgment. They may differ with me and I am not going to abuse them, but remember what I say: Their chickens will come home to roost; they will come home to those who voted for what they think is the selfish present interest of their States.—*Extracts, see 7, page 64.*

"Major Fractions" vs. "Equal Proportions"

University Professors Advocate Major Fractions

PROFESSOR CHARLES E. HILL

Dept. of Constitutional Law, George Washington University.

While the method of equal proportions would carry out the intent of the framers of the Constitution with greater exactness, that solution is, in my opinion, less easily comprehended. I should, therefore, advocate the method of major fractions as the guide to be laid down by Congress. The most untutored mind can understand this method and it has already been applied satisfactorily in two apportionments, those of 1840 and 1910.

PROFESSOR FREDERIC A. OGG

Dept. of Political Science, University of Wisconsin

Such study of the matter as I have been able to make leads me to indorse the method of major fractions as being, as you yourself evidently feel, on the whole the most satisfactory of the several methods or plans proposed. Your explanation and defense of this method seem to me not only plausible but convincing, and, although I am very far from being an authority on the subject, I am entirely willing to be quoted as favoring the major fraction plan.

PROFESSOR ROBERT E. CUSHMAN

Dept. of Political Science, Cornell University

There is no doubt in my mind that the object of a legislative apportionment in the House of Representatives is "to bring it about that each resident or each million residents of the country, wherever they may reside shall have the same interest, or the same representation, in the House of Representatives as nearly as may be."

This seems to me not only sound from the standpoint of constitutional law and constitutional history but also from the standpoint of common sense. This being the case, the method of major fractions, which will accomplish this end, should be adopted by Congress as the basis for all future apportionments.

PROFESSOR THOMAS H. REED,

Department of Political Science, University of Michigan

I think you are right in your contention as to the object of apportionment—namely, that it is to give each individual, wherever he may reside, equal representation in the House of Representatives. As a political scientist, I think it is much more important that there should be a reasonably accurate apportionment at the intervals required by the Constitution than that the apportionment should be perfect.

I think it is very much more necessary that the system used be understood by the public at large and regarded by them as fair and reasonable than that it should attain a theoretical perfection. I am sure that the public would never under-

stand the system of equal proportions and if such a method were adopted, I fear that they would think some sort of trick was being played upon them. The method of major fractions is one long familiar to everyone as applied to many relations of life. There is no doubt of its being approved by public opinion.

PROFESSOR CHARLES K. BURDIRK,

Dean of the Cornell University Law School

I should say that James Wilson probably expressed the intention of the framers of the Constitution when he said that "equal numbers of people ought to have an equal number of representatives," and since the method of major fractions most fully accomplishes this purpose it would seem to me desirable that apportionment should be provided for by that method.

PROFESSOR J. S. HALL,

Dean of the University of Chicago Law School.

As a matter of constitutional law, I feel fairly confident that any one of the four methods of apportionment analyzed by you would satisfy the constitutional requirement. * * *

The real question is: What object does Congress wish most to attain by its choice of method? As an original question, the mathematics of the method of "equal proportions" appeals to me a little more than any other; but the practical arguments seem to me somewhat in favor of the method of "major fractions." It is much easier to explain (to anyone but a society of mathematicians), and it better accords with the objects actually sought by most previous apportionments. That is, it has a persuasive historical background.

PROFESSOR MAX FARRAND,

Director of Research, Huntington Library, Pasadena, Calif.

I have read carefully the "hearings" of the committee and refreshed my memory by running over again the pertinent facts of the records of the Federal convention of 1787, and I have no hesitation in saying that in my opinion major fractions more nearly represents what the framers of the Constitution had in mind, that it more closely conforms to precedent and practice since the Constitution was adopted, and is more readily understandable by the nonexpert than "equal proportions."

PROFESSOR JAMES T. YOUNG,

Law School, University of Pennsylvania.

My tendency or bias grows steadily stronger in favor of a national conception of elections. * * *

If one starts from a more national viewpoint, one is apt to arrive at purpose number three (i. e., major fractions method) on your list of objects of apportionment.—*Extracts, see 8, page 64.*

"Major Fractions" vs. "Equal Proportions"

University Professors Advocate Equal Proportions

TRUMAN L. KELLEY,

*Professor of Education and Psychology, Stanford University,
Vice-President American Statistical Association.*

My attention has been called to the question of reapportionment of Representatives, and I should like to express the hope that your committee will carefully consider the method of equal proportions devised by Prof. E. V. Huntington.

As to which of two not unreasonable bases of apportionment is employed may seem of little moment, and so it may be until some slight injustice arising from the poorer of the two methods becomes an issue and takes the field to the exclusion of more vital matters. Personally I believe that Professor Huntington's method is the most equitable and defensible when viewed from all angles that has been proposed and I hope it may be incorporated in the method of apportionment indorsed by your committee.

LEONARD P. AYRES,

President of the American Statistical Association.

I have recently learned that you have in preparation a bill prescribing that the apportionment of Representatives in Congress shall be made in the future by the method of major fractions that has sometimes been used in the past. I sincerely hope that you will give consideration to the so-called method of "equal proportions" which was originally worked out, at least in part, by Dr. Joseph A. Hill of the Census Bureau. I assume that you know of the report on this matter which was made some five years ago by a joint committee of the American Statistical Association and the American Economic Association. I have recently reviewed the work of that committee and have come to the very definite conclusion that their recommendation was completely valid, and that it is mathematically impossible for any other method to be so nearly right as the one that they recommended.

I sincerely trust that the question will be most carefully considered before legislative action is taken, and that the competent men who have given special study to the matter may be afforded an opportunity to present their views and arguments in writing or in person.

PROF. E. R. HEDRICK,

University of California.

My attention has been called to the fact that your committee is considering the apportionment of Congressmen to the various States, and that one of the methods which is before you is the so-called method of equal proportions.

It happens that papers dealing with this question have come to my hands as editor of the *Bulletin of the American Mathematical Society* and I feel convinced that the method

of equal proportion is the only one which is sound from the mathematical point of view. May I urge upon your committee strongly the consideration of it, and may I add my own recommendation of it to others which must have reached you from many sources.

EDMUND E. DAY,

University of Michigan.

I am informed that your committee is considering a bill having to do with the method of apportioning Representatives. If this is the case I trust the committee may consider favorably the method of equal proportions, in contrast to the method of major fractions which has been used for the most part in the past. It seems to me that the problem is primarily a mathematical one in that the aim should be to reduce to the lowest possible terms the differences that necessarily obtain among the ratios between the populations of the several States and the number of Representatives in Congress allotted to them. It would be unfortunate if our apportionment were to become the occasion for political maneuvering. It can not possibly become such if the logical bases for reapportionment are regarded with sufficient care. The case for the method of equal proportions seems to me to have been convincingly given by Prof. E. V. Huntington of the department of mathematics at Harvard University and by the members of the advisory committee of the Bureau of the Census.

I very much hope that your committee may give attention to the advantages of the method of equal proportions in connection with any apportionment legislation that may come before you.

H. Z. RIETZ,

Head of the Department of Mathematics.

I am taking the liberty of writing you as chairman of the House Committee on the Census about the method of apportionment of Representatives in Congress among the several States.

The problem of interpreting the constitutional provision is a mathematical one and the "method of equal proportions" comes much closer to the simple common-sense interpretation of the constitutional provision than the "method of major fractions."

The analysis of the relative merits of the different methods by the advisory committee to the Director of the Census makes it very clear that the "method of equal proportions" should be adopted as a consistent and scientific interpretation of the provisions of the Constitution.

I sincerely hope that careful consideration will be given to the advantages of the "method of equal proportions" in any pending legislation.—*Extracts, see 8, page 64.*

The 70th Congress

Duration of the 70th Congress, March 4, 1927-March 4, 1929

First, or "Long" Session, Convened December 5, 1927.

Adjourned May 29, 1928

Second, or "Short" Session, Began December 3, 1928

Adjourns March 4, 1929

In the Senate

Membership

Total—96

49 Republicans 46 Democrats
1 Farmer-Labor

Presiding Officer

President: Charles G. Dawes, R.
Vice-President of the United States

Floor Leaders

Majority Leader

Charles Curtis, Kansas, R.

Minority Leader

Joseph T. Robinson, Ark., D.

In the House

Membership

Total—435

234 Republicans 193 Democrats
2 Farmer-Labor
1 Socialist
5 Vacancies

Presiding Officer

Speaker: Nicholas Longworth, R.
Member of the House from Ohio

Floor Leaders

Majority Leader

John Q. Tilson, Conn., R.

Minority Leader

Finis J. Garrett, Tenn., D

The February Outlook In Congress

The Fifteen Cruiser Bill—Prohibition Enforcement—Cotton and Grain Future—Nicaraguan Canal Survey—Census and Reapportionment

By NORBORNE T. N. ROBINSON



ONGRESS enters the month of February with the program of the House virtually completed. The Senate, however, has before it a number of important bills and resolutions which Senate leaders are anxious to dispose of before noon on March 4, when the Seventieth Congress automatically comes to an end with the adjournment, sine die, of the Second, or "Short" Session.

Three Imperative Measures

With the convening of the present session on December 3 last there were three measures up for consideration, action on which was considered imperative. These were the Boulder Canyon Bill; the Kellogg Multilateral Treaty for the Renunciation of War; the bill authorizing the construction of fifteen naval cruisers and the Congressional Reapportionment Bill.

The Kellogg Treaty and the Cruiser Bill

The treaty was solely for Senate consideration. The cruiser bill had passed the House during the first session. The reapportionment bill had been reported to the House by the Committee on the Census, but had been sent back to that committee.

In addition to these were the annual appropriation bills which had to be handled promptly and brought to final passage before the end of the session in order that provision be made for running the Government for the fiscal year beginning July 1, 1929.

Public attention has been centered almost exclusively on the Senate as the session has gone along because of the controversial nature of the questions before it. On the opening day of the session the sharp controversy over the Boulder Canyon Bill, left over from the closing days of the

preceding session, was renewed and was the object of public attention until the final passage of the bill by the Senate on December 14; the agreement to the Senate amendments by the House on December 18 and the signing of the bill by the President on December 21.

The Borah-Hale Agreement

In the meantime the Kellogg Treaty was before the Senate Committee on Foreign Relations. When it was reported on December 18 a parliamentary battle began over the question of whether the treaty resolution or the cruiser bill should take precedence on the Senate program.

This struggle was short-lived and resulted in a compromise agreement, worked out by Senator William E. Borah, Idaho, R., chairman of the Committee on Foreign Relations, in charge of the treaty resolution, and Senator Frederick Hale, Maine, R., chairman of the Committee on Naval Affairs, in charge of the cruiser bill. By this compromise the two measures were placed side by side—the treaty resolution as the unfinished executive business and the cruiser bill as the unfinished legislative business of the Senate.

Executive Sessions

The meaning of this was that whenever the Senate held an executive session, by which is meant a session to consider executive business, or business coming to it direct from the President, it was to give first place to the treaty resolution and that when not in executive session the cruiser bill should hold first place.

Executive business of the Senate is chiefly confined to two matters. One is the ratification of treaties, which requires a two-thirds vote. The other is the confirmation of nominations by the President of persons for offices which, by

Constitutional or Statutory provision, require "the advice and consent of the Senate." This requires a majority vote.

Open and Secret Executive Sessions

An executive session of the Senate may be either secret or open. The Constitution does not specify that treaties or nominations shall be considered in secret session, but the rules of the Senate do. The Senate rules, however, prescribe that either may be considered in open executive session whenever the Senate, by a majority vote, decides to so consider them.

Open Sessions for Important Treaties

In recent years there has been a tendency to consider all important treaties in open executive session. The treaty providing for America's entrance into the League of Nations, sent to the Senate by President Wilson, was considered in open session, as was also the treaty providing for America's entry into the Court of International Justice, or World Court, sent by President Harding.

Consequently the expected happened when the Senate decided to consider the Kellogg Treaty in open executive session. It was thought from the beginning that the treaty would be ratified, but there was a question as to whether reservations of any sort would be attached to it. It was finally agreed, in response to requests of a number of Senators, that the Committee on Foreign Relations should give to the Senate its interpretation of the provisions of the treaty as to America's rights and obligations.

The Senate's Interpretations

The committee report stated, as the opinion of the committee that the treaty does not impair American rights under the Monroe Doctrine; does not impair its right of self-defense and does not bind America to resort to any punitive measures against any nation which might violate the treaty. The report was adopted by the Senate, not as a reservation to the treaty, but merely as an official announcement by the Senate of its understanding of the treaty and the effect of its provisions.

After adopting the committee report, the Senate ratified the treaty on January 15 by a vote of 85 to 1, with 9 Senators not voting. The single vote cast against the treaty was that of Senator John J. Blaine, Wisconsin, R.

The Navy Cruiser Bill

Immediately after the ratification of the treaty attention was focused on the cruiser bill.

It was felt at the beginning of the session that if the cruiser bill could be brought to a vote a majority of the Senators would vote for its passage. There was sufficient opposition, however, to indicate that efforts would be made by opponents of the bill to go as far as possible to prevent a vote being taken.

In addition to those who were opposed to the construction of any more war craft whatever were those who felt that construction should be put off for another year at least, while efforts were renewed to obtain the agreement of Great Britain and Japan to further reduction in naval armaments.

Provisions of the Bill

The cruiser bill authorizes the construction of fifteen new light cruisers, work to be started on five each year for the three successive fiscal years ending June 30, 1929, 1930 and 1931, and one aircraft carrier to be begun prior to June 30, 1930. The cost of the cruisers is not to exceed \$17,000,000 each and the cost of the aircraft carrier is not to exceed \$19,000,000, making the total cost of the construction program \$274,000,000.

Some Senators who are not opposed to the bill entirely felt that, in the hope of obtaining a new international arma-

ment reduction agreement, no time limit should be set in the bill for the construction of the cruisers, but that the decision as to when they shall be constructed be left with the President, thereby permitting him to renew negotiations for another arms reduction conference.

At THE DIGEST goes to press the cruiser bill is approaching final action and is expected to be disposed of by the first of February or shortly thereafter.

The Steering Committee Program

Following the cruiser bill the Senate will immediately take up the program recommended by the Republican Steering Committee. This is not a committee of the Senate, but a committee of the majority party which considers the various pending measures and recommends to the majority Senators a legislative program. These recommendations are usually followed.

The Steering Committee met on January 25. After it had considered the various measures before it, it authorized its chairman, Senator Frederic M. Sackett, Kentucky, R., to report the following program:

S. 1093, a bill introduced by Senator Caraway, Arkansas, D., which provides for the prevention of the sale of cotton or grain future markets.

Prohibition Enforcement

S. 2901, a bill introduced by Senator Wesley L. Jones, Washington, R., to increase the penalties under the Prohibition Act.

S. J. Res. 117, a resolution introduced by Senator Walter E. Edge, New Jersey, R., authorizing the President to direct the engineer corps of the army to make a survey as to the cost and feasibility of the construction of an interoceanic canal across Nicaragua and also to make a survey as to the feasibility and cost of enlarging the Panama Canal for future transportation uses. The resolution carries an appropriation of \$150,000 for this work, and provides for its accomplishment in two years.

H. R. 8298, a committee bill for the condemnation of property in the District of Columbia for a produce market site.

Census and Reapportionment

Two other measures which are not on the Steering Committee program as yet, but which are expected to receive consideration, are the reapportionment bill and the census bill. Full details of the reapportionment bill will be found elsewhere in this issue of THE CONGRESSIONAL DIGEST. The census bill makes provision for taking the fifteenth census and carries the appropriation necessary. Both these bills have passed the House.

The Situation in the House

Having passed the reapportionment bill and being well up with its schedule of appropriation bills, the House has nothing before it except action on the bills that come over from the Senate. Most of these will be bills that have been passed by the House and which may or may not have Senate amendments which will require their being sent to conference.

House leaders estimate that the House is in a position to handle all this work without delay since there is no legislation of a controversial nature due to be given original consideration by the House.

The first of the Senate bills of a controversial nature to reach the House is the First Deficiency Appropriation bill, which carries a Senate amendment, offered by Senator William J. Harris, Georgia, D., appropriating the sum of \$24,000,000 for use by the President in prohibition enforcement. This amendment is not agreeable to the President nor the Secretary of the Treasury was expected to meet opposition in the House.

The Panama and Nicaragua Canal Survey Resolution

By HON. WALTER E. EDGE,

U. S. Senator, New Jersey, R.

The Edge Resolution (S. J. Res. 117) provides for a survey by the Engineer Corps of the Army of the cost and feasibility of building a canal across Nicaragua and enlarging the Panama Canal. On January 25 the resolution was placed on the Steering Committee program in the Senate.



IT SEEMS perfectly obvious, with the facilities of the Panama Canal rapidly reaching a maximum, and with an investment already made by our Government of \$3,000,000 for canal rights in Nicaragua, that as a matter of information the country should be acquainted with existing conditions and the possibilities of the future. This can only be obtained through the agency of such a survey as proposed.

The pending resolution does not set up any new board or commission. It simply provides that the Army engineers secure the information necessary and report their findings to Congress. The sum of \$150,000 is proposed for the expenses of the survey and has been approved by the Budget Director. This relatively small amount has been stipulated because much of the information has already been secured by the Isthmian Canal Commission and presented in their report in 1901.

The additional information desired is that which changed conditions and altered methods of construction would naturally make necessary after a lapse of 27 years.

This resolution was considered by the Committee on Inter-oceanic Canals and reported favorably to the Senate. Amendments proposed by Senator McKellar, of Tennessee, have been adopted which in effect suggest further negotiations on the part of the President with the Central American countries concerned in a possible construction of the canal.

It is clearly established, if the percentage of traffic continues for the next five or ten years to increase along similar ratios as in the past, or even in somewhat decreased ratios, the capacity of the Panama Canal will have reached its maximum in less than ten years.

Personally I do not believe the business of the canal can continue to double each five years, as, of course, this would require a very largely increased tonnage in the near future. However, computing it on the most conservative basis, the capacity of the present canal will certainly be reached between 1940 and 1960. I do not believe from the facts at hand that this statement can be successfully disputed.

This would mean that in twelve years the capacity of the existing Panama Canal would have reached or be nearing its maximum.

Increasing Facilities

All kinds of estimates have been made as to the length of time which would be required to build a Nicaraguan canal. Adding to the actual time of construction, the time consumed for a further survey and for negotiations with Costa Rica, Salvador, and Honduras, as well as further detail plans with Nicaragua, I think it would be conservative to estimate that a new canal could not be completed and opened to traffic within 15 or 20 years.

Thus, it must be realized the necessity for deliberate consideration of this entire project is facing us immediately.

To further increase the capacity of the Panama Canal at

any time would necessitate its transformation into a sea-level canal. Any estimate as to the cost of this would be merely a guess. I have never heard of an estimate under a billion dollars. Even a sea-level canal, with the great difference between the rise and fall of the tide in the Pacific and the Atlantic, would still require tidal locks, so that the lock system could not be entirely eliminated. As to the practicability of all this, the pending resolution requests official information.

I have gone into the above detail in order to present the picture of the possibilities of the Panama Canal in the future from every engineering standpoint. In presenting these details I have depended to a great extent upon the report of the Governor of the Panama Canal himself, supplemented by inquiry from other Army engineers familiar with the situation.

Demonstrating it is impossible to accurately predict how traffic will increase, I quote from Prof. Emery R. Johnson, who was a member of the Isthmian Canal Commission that made the report in 1901. At that time Doctor Johnson publicly predicted the Panama Canal traffic would total about 11,000,000 tons in 1924, 23 years later. In 1912 Doctor Johnson changed his predictions and stated the traffic would be about 17,000,000 tons in 1925. The actual tonnage in 1925 (including estimate for free transits) was about 24,000,000 tons, an increase over the original prediction of over 100 per cent. Doctor Johnson's studies were based on world trade and canal traffic in Europe, I believe principally the Suez Canal traffic.

In addition, Doctor Johnson estimated Panama Canal traffic would increase by 60 per cent from 1925 to 1935. If this is correct, then we could expect 38,000,000 tons in 1935. As a matter of fact, the traffic in the year just closed as per the report, is including free transits, about 31,000,000 tons, leaving but very little to go in the next seven years.

Doctor Johnson stated that his predictions were conservative, and they have certainly up to date proven to be so.

From a study of the foregoing, even though Congress authorized several hundred million dollars additional appropriation for Panama, there can be no question if the world and its commerce are to move on, that from any angle we approach the problem, the maximum of the facilities of the Panama Canal will be reached in a relatively short period of time. In any event, the problem presents a situation demanding immediate and serious consideration of the construction of another method of transportation between the Atlantic and the Pacific Oceans.

As to the present cost of a canal across Nicaragua I would not hazard a guess. Although considerably longer than Panama, much of the distance is traversed through the San Juan River and Lake Nicaragua requiring relatively little dredging. Other engineering advantages of topography undoubtedly entered into consideration which justified the eminent

commission of engineers in 1901 to favor its construction even over the completion of the Panama route.

Economic Arguments Favoring a Nicaraguan Canal

At the outset I drew attention to the conviction that the construction of a Nicaraguan canal presented arguments from both the economic and diplomatic viewpoint. Permit me to first discuss the proposal from the economic or material point of view.

In the first place, the proposed Nicaraguan canal will materially shorten the trade routes between the Atlantic and Pacific ports of the United States.

The land distance from the entrance of the Panama Canal to the entrance of the proposed Nicaraguan canal is approximately 500 miles. However, calculating the distance by sea lanes, the saving would be slightly over 100 miles. It will thus be plainly seen that for ships trading between the Atlantic and the Pacific coast lines of the United States a material saving of time would be effected in a voyage in either direction.

For illustration, I am informed that the route which would be taken by vessels between New York and San Francisco is about 434 statute-miles shorter, by way of the proposed Nicaraguan canal, than by the Panama route. The authority for this figure of 434 miles is General Abbot in his book "Problems of the Panama Canal," page 55. General Abbot quotes Commander Todd, of the Hydrographic Bureau of the Navy Department, as his authority. Approximately the same figure is deduced from Doctor Johnson's tables given in Appendix N. N. of the report of 1901.

Experts have computed that the average speed for ships is 10 knots or 11½ statute-miles per hour. Upon this basis it is readily seen that there would be a saving of about 40 hours, almost two days, in such a voyage.

On the other hand, the Panama Canal is 133 miles shorter from sea to sea than the proposed Nicaraguan route. The actual time of travel through the Panama Canal is eight hours. By the 1901 commission it was estimated to require 12 hours. At the same time, on the same basis, the time consumed for travel through a Nicaraguan canal was estimated at 33 hours. If this latter estimate is reduced in the same proportion as the actual time for travel through the Panama Canal, then the time consumed through a Nicaraguan canal would be approximately 22 hours.

While we are all striving for world peace, at the same time we have not yet reached that happy millenium or, at least, where such assurance can be supplied. If the United States were engaged in a war with another nation, it is not

difficult to imagine that one of the first public works which the enemy would seek to destroy would be the Panama Canal. A modern bomb dropped on the Gatun Lock and it would be all over. While this might happen if the Nicaraguan canal was constructed, on the other hand, all will agree we would be better protected with two interoceanic canals than with one.

Also properly classified under economic arguments, is the commerce and trade with Central and South America. Such a canal would unquestionably develop business that can never be secured with the Panama Canal alone. In fact, the history of the world demonstrates conclusively that with each additional system of transportation new commerce and trade beyond any original estimates always follows.

The Diplomatic Possibilities

A word as to the diplomatic possibilities.

As everyone who has followed the history of the Panama Canal must admit, when its proprietorship passed into the hands of Uncle Sam, our diplomatic troubles with Columbia and Panama were rapidly terminated. Today Colon, old Panama City, and Cristobal are busy, thriving municipalities. Nationals of various countries are located there and engaged in retail and wholesale commerce and trade. The relationship is most friendly. Any questions that have arisen requiring diplomatic disposition have been or are being settled in a peaceful and friendly manner. In other words, the invasion of North American capital was not repulsed; it was invited and apparently appreciated. I repeat, the relationships from a diplomatic and contact standpoint have improved with this closer acquaintance.

Is it unreasonable to assume that a similar result would follow the determination of the United States to construct a Nicaraguan canal?

I will not attempt to refer to the history of the relations of Nicaragua and the United States for years past. I admit it does not present a picture that can be pleasing to any of us.

Through the administrations of both major political parties these difficulties, these uncertainties, perhaps these errors and mistakes have been made. No point, however, can be gained in this discussion by reviewing the record fairly familiar to all of us.

It is, however, a fact, emphasized in recent days, that the accredited leaders of both political parties in Nicaragua are desirous that the United States take advantage of the canal rights they have purchased and construct a Nicaraguan canal. All economic and material considerations lead to the same conclusion.

Should a Reapportionment Bill Be Passed Before 1930?

Continued from page 49

Pro

HON. CLARENCE J. McLEOD—*Continued*

themselves up as superior to the Constitution, from which they derived their own authority, by not obeying the mandate to reapportion Congress every 10 years.

I have been a Member of the House throughout most of this period of which I have been speaking. I know that the lapse of duty on the part of Congress has accomplished over the vigorous protests of many individual Members. I will say that individually there is not a finer or more conscientious man living than most of those who guide the public affairs of the Nation here in the Halls of Congress. Yet collectively these men have succumbed to a condition which has made a blot on the otherwise shining shield of Congress.

—*Extracts, see 6, page 64.*

Con

HON. JOHN E. RANKIN—*Continued*

show you that they have tried this case in advance, they have made one of their guesses, and one of the things the country is suffering from today is bureaucratic guesses. The Census Bureau now undertakes to guess what the population will be in 1930, and I made them admit—and it is in the hearings—that they took it for granted that the same disturbed conditions that apparently shifted the population between 1910 and 1920 would continue until 1930. They think that this disturbed condition, this drift, will continue in that direction until 1930. They do not seem to know that the war is over.

—*Extracts, see 6, page 64.*

Action Taken by Congress

A Daily Summary of the Proceedings of the House and Senate

December 21, 1928, to January 19, 1929

Note—This department contains a record of action on the floor of the House and the Senate. By following it from month to month the reader obtains a compact but complete review of the work actually done by Congress throughout the session. The principal abbreviations used are the following: H. R. means House bill; H. Res. means House Resolution; H. J. Res. means House Joint Resolution; H. Con. Res. means House Concurrent Resolution; S. means Senate Bill; S. Res., Senate Resolution; S. J. Res., Senate Joint Resolution, and S. Con. Res., Senate Concurrent Resolution. If reference is made to the consideration or action by the Senate of a House bill or resolution, it means that the House has passed it and sent it to the Senate, and vice versa.

Friday, December 21, 1928.

Senate:

Received the credentials of Messrs. John B. Kendrick, D., re-elected a Senator from Wyoming, and Burton K. Wheeler, D., re-elected a Senator from Montana.

Mr. Charles S. Deneen, Ill., R., presented to the Vice-President a gavel fashioned from a tree grown in the yard of the Hoover home in Iowa.

The House having disagreed to Senate amendments to the Interior Department Appropriation bill, H. R. 13089, the Vice-President appointed Messrs. Smoot, Utah, R.; Curtis, Kans., R., and Harris, Ga., D., as conferees on the part of the Senate.

Mr. Smith, S. C., D., spoke on the over-estimation of the cotton crop by the Government.

Adjourned.

House:

Agreed to Senate Amendments on H. R. 13665, providing for the submission to Congress of preliminary plans and estimates of cost for the construction of a building for the United States Supreme Court.

Adjourned.

Saturday, December 22, 1928.

Senate:

The chief clerk read a poem of tribute to Mr. Justice Oliver Wendell Holmes of the United States Supreme Court and his father, Oliver Wendell Holmes, written by Horace C. Carlisle.

The Vice President appointed Mr. Keyes, N. H., R., a conferee on the Interior Department Appropriation bill in the place of Mr. Curtis, Kans., R., relieved on account of other duties.

Messrs. Tyson, Tenn., D.; Fess, Ohio, R., and McKellar, Tenn., D., were appointed members of the commission for a President's plaza in Nashville, Tenn., as a memorial to Andrew Jackson, James K. Polk and Andrew Johnson.

Received and referred to appropriate committees reports of various commissions.

Passed S. 4712 authorizing the Secretary of War to grant a right-of-way to the Southern Pacific Railroad Company across the Benicia Arsenal Military Reservation, Calif.

Mr. Brookhart, Iowa, R., spoke on co-operative economics.

Executive session.

Adjourned until noon January 3, 1929.

House:

Transacted routine business.

Mr. MacGregor, N. Y., R., having been elected Justice of the New York Supreme Court, made a short farewell address.

Adjourned until noon January 3, 1929.

Thursday, January 3, 1929.

Senate:

Received the credentials of Messrs. Hiram W. Johnson, R., re-elected a Senator from California; Hubert D. Stephens, D., re-elected a Senator from Mississippi; David I. Walsh, D., re-elected a Senator from Massachusetts; Arthur H. Vandenburg, R., re-elected a Senator from Michigan, and C. C. Dill, D., re-elected a Senator from Washington.

Mr. Norris, Nebr., R., spoke on the proposed U. S. Court of Administrative Justice.

Mr. Jones, Wash., R., and Mr. Overman, N. C., D., were appointed members of a Joint Select Committee on the Disposition of Useless Papers in the Executive Departments.

Passed H. R. 13569, the Departments of State, Justice, Judiciary, Commerce and Labor Appropriation Bill.

Mr. Hale, Me., R., spoke on H. R. 11526, the cruiser construction bill.

Discussed and debated the multilateral peace treaty.

Recessed.

House:

Rep. Crampton, Mich., R., spoke on H. R. 5767, establishing uniform requirements for Government contracts.

Agreed to H. Res. 273, creating a Committee on Memorials composed of three members of each House to arrange one day in each session as a memorial day to the deceased members of each House.

Resumed consideration of H. R. 15712, the War Department Appropriation Bill.

Representatives Simmons, Nebr., R.; La Guardia, N. Y., R., and others spoke on the bill.

Adjourned.

Friday, January 4, 1929.

Senate:

Messrs. Reed, Pa., R.; McMaster, S. D., R., and Fletcher, Fla., D., were appointed conferees on H. R. 11469, authorizing appropriations for construction at the U. S. Military Academy, West Point, N. Y.

Passed S. 5022, increasing the free distribution allotments of the Congressional Record to 150 for each Senator and 100 for each Representative.

Resumed consideration of the Multilateral Peace Treaty in open executive session.

Messrs. Reed, Mo., D., Robinson, Ind., R., Robinson, Ark., D., Borah, Idaho, R., and others spoke on the treaty.

Messrs. Couzens, Mich., R., Fess, Ohio, R., and Hawes, Mo., D., were appointed conferees on H. R. 7729, the prison-made goods bill.

Executive session, behind closed doors.

Adjourned.

House:

Passed S. 3127, amending the penal code of the U. S. by making it a penal offense to transmit poisonous drugs and medicines in any form by mail.

Representatives Kopp, Iowa, R., Zihlman, Md., R., and Connery, Mass., D., were appointed conferees on H. R. 7729, the prison-made goods bill.

Received the committee report on H. R. 15848, the First Deficiency Appropriation bill.

Representatives Morin, Pa., R., James, Mich., R., and McSwain, S. C., D., were appointed House Conferees on H. R. 11469, authorizing appropriations for construction at the U. S. Military Academy, West Point, N. Y.

Resumed consideration of H. R. 15712, the War Department Appropriation bill.

Representatives Barbour, Calif., R., Collins, Miss., D., La Guardia, N. Y., R., and others spoke on the bill.

Adjourned.

Saturday, January 5, 1929.

Senate:

Messrs. Capper, Kans., R., Blaine, Wis., R., and King, Utah, D., were appointed conferees on S. 3581, authorizing the Commissioners of the District of Columbia to settle claims and suits against the District of Columbia.

Resumed consideration of the Multilateral Peace Treaty.

Messrs. Swanson, Va., D., McLean, Conn., R., and others spoke on the treaty.

Agreed to S. Con. Res. 28, setting aside the 13th day of February for the recounting of the electoral votes for President and Vice-President and their entrance on the Journals of the two Houses.

Executive session behind closed doors

Adjourned.

House:

Began consideration of H. R. 15848, the First Deficiency Appropriation bill, and discussed the proposed appropriation of \$75,000.

ooo for tax refunds.

Representatives Anthony, Kans., R., Byrns, Tenn., D., Collier, Miss., D., and others spoke on the bill.

Received the conference report on H. R. 15089, the Interior Department Appropriation bill.

Adjourned.

Monday, January 7, 1929.

Senate:

Received the credentials of Messrs. Frederick Hale, R., reelected a Senator from Maine, Park Trammell, D., reelected a Senator from Florida, and Felix Hebert, elected a Senator from Rhode Island, to succeed Peter Goelet Gerry, D., on March 4, 1929.

By unanimous consent it was ordered that Mr. Burton, O., R., be assigned membership on the Committees of Civil Service and Commerce; Mr. Hastings, Del., R., a member of the Committees on the District of Columbia and Post Offices and Post Roads and Mr. Thomas, Idaho, R., a member of the Committee on Mines and Mining.

Mr. Schall, Minn., R., spoke on turning farm wastes into farm profits.

Mr. Walsh, Mont., D., spoke on the Elk Hills, Calif., oil reserves. Received the conference report on H. R. 15089, the Interior Department Appropriation bill.

Passed S. 4739, authorizing the Secretary of the Treasury to sell certain Government-owned lands in New Hampshire.

Passed S. J. Res. 171, granting the consent of Congress to the city of New York to enter upon certain U. S. property for the purpose of constructing a rapid transit railway.

Passed several bills on the calendar.

Resumed consideration of the Multilateral Peace Treaty.

Passed H. R. 15404, authorizing the Secretary of the Navy to deliver to the custody of the Louisiana State Museum the silver service in use on the Battleship "Louisiana" and to submit a report thereon.

Received the report of the Supervising Inspector General of the U. S. Steamboat Inspection Service on the "Vestris" disaster.

Recessed.

House: Received in the Speaker's Gallery the Commander-in-Chief of the Grand Army of the Republic, John Reese.

Passed several bills on the consent calendar.

Debated and passed H. R. 15848, the First Deficiency Appropriation bill.

Adjourned.

Tuesday, January 8, 1929.

Senate:

Passed S. 4644, authorizing an appropriation for construction at the U. S. Military Academy, West Point, N. Y.

Passed a number of bridge bills.

Resumed consideration of the Multilateral Peace Treaty.

Messrs. Bruce, Md., D., Borah, Idaho, R., Moses, N. H., R., Wagner, N. Y., D., and others spoke on the treaty.

Agreed to House amendments on S. 3779, authorizing the construction of a telephone line on the Western Navajo Indian Reservation, Ariz.

Executive session behind closed doors.

Recessed.

House:

Representatives Byrns, Tenn., D., Taylor, Tenn., R., and Eslick, Tenn., D., were appointed members of the Committee for a President's plaza and memorial in Tennessee.

Debated and agreed by a vote of 247 to 78 (not voting 99) to H. Res. 283, that James M. Beck, Pa., R., was entitled to a seat in the House of Representatives.

Received the conference report on H. R. 7729, the prison-made goods bill.

Resumed consideration of H. R. 15712, the War Department Appropriation bill.

Representatives La Guardia, N. Y., R., Barbour, Calif., R., O'Connor, La., D., and others spoke on the bill.

Adjourned.

Wednesday, January 9, 1929.

Senate:

Resumed consideration of the Multilateral Peace Treaty.

Messrs. Blaine, Wis., R., Reed, Mo., D., and others spoke on the treaty.

Agreed to conference report on H. R. 7729, divesting prison-made goods of their interstate commerce character in certain cases.

Mr. Reed, Pa., R., submitted a report on S. Res. 7, authorizing a committee to investigate charges that certain Senators were bribed by payment of money from foreign governments.

The report states that documents purporting to show that Senators had received sums of money from the Mexican Government were all forgeries, and that similar documents, found in Europe,

purporting to show Senators had received money from the Russian-Soviet Government, were also forgeries.

Mr. Walsh, Mass., D., spoke on the Multilateral Peace Treaty. Executive session.

Recessed.

House:

Representative England, W. Va., R., spoke on the pending river and harbor improvement bill.

Representative Howard, Nebr., D., spoke on H. R. 14461, authorizing an appropriation of sufficient amount for a joint reunion of the survivors of both sides of the war of 1861-1865.

Representative Hudson, Mich., R., spoke on the criminal code of Michigan.

Resumed consideration of H. R. 15712, the War Department Appropriation bill.

Representatives Shreve, Pa., R., Tinkham, Mass., R., Ackerman, N. J., R., Oliver, Ala., D., and Griffin, N. Y., D., were appointed conferees on H. R. 25569, the Departments of State, Justice, the Judiciary, Commerce and Labor Appropriation bill.

Representatives Zihlman, Md., R., Underhill, Mass., R., and Gilbert, Ky., D., were appointed conferees on S. 3581, authorizing the Commissioners of the District of Columbia to settle claims and suits against the District of Columbia.

Adjourned.

Thursday, January 10, 1929

Senate:

Messrs. Reed, Pa., R., and Simmons, N. C., D., were appointed members of the Joint Select Committee for the Disposition of Useless Papers in the Treasury Department.

Resumed consideration of the Multilateral Peace Treaty in open executive session.

Messrs. Barkley, Ky., D.; Reed, Mo., D., and others spoke on the Treaty.

Messrs. Jones, Wash., R.; Warren, Wyo., R.; Smoot, Utah, R.; Borah, Idaho, R.; Overman, N. C., D., and Harris, Ga., D., were appointed conferees on H. R. 15569, the Departments of State, Justice, Judiciary, Commerce and Labor Appropriation bill.

Received the credentials of Tom Connally, D., elected a senator from Texas.

Debated the Multilateral Peace Treaty.

Executive session behind closed doors.

Recessed.

House:

Agreed to conference report on H. R. 7729, the prison-made goods bill.

Col. Paul V. McNutt, national commander of the American Legion, was presented to the House.

Began general debate on H. R. 11725, for the apportionment of the Representatives in Congress, after adopting resolution to consider it.

Representatives Bankhead, Ala., D.; Rankin, Miss., D.; Thurston, Iowa, R.; Gibson, Vt., R.; Moorman, Ky., D., and others spoke on the bill.

Adjourned.

Friday, January 11, 1929

Senate:

Passed S. 1156, granting a pension of \$5,000 to Lois I. Marshall, widow of Thomas R. Marshall, late Vice-President of the United States.

Received committee report on H. R. 15848, the First Deficiency Bill.

Resumed consideration of the Multilateral Peace Treaty in open executive session.

Mr. Reed, Mo., D., spoke on the Treaty.

Discussed the charges that certain Senators were bribed by the payment of sums of money from foreign governments.

Executive session behind closed doors.

Recessed.

House:

Administered the oath of office to Mrs. Oldfield, D., elected a Representative from Arkansas to fill the unexpired term of the late William A. Oldfield.

Passed by a vote of 227 to 134 (not voting, 66), H. R. 11725, for the reapportionment of Representatives in Congress.

Representatives Jacobstein, N. Y., D.; Lozier, Mo., D.; Tinkham, Mass., R.; Wingo, Ark., D., and others spoke on the bill.

Adjourned until Monday, January 14, 1929.

Senate:

Saturday, January 12, 1929

Messrs. Jones, Wash., R., and Fletcher, Fla., D., were appointed members of the Joint Select Committee for the Disposition of Useless Papers in the Department of Commerce.

Agreed to S. Res. 285, authorizing an additional sum of \$20,000 from the contingent fund of the Senate for the hearing and deter-

Wednesday, January 16, 1929

mining of the pending contest between William S. Vare, R., and William S. Wilson, D., involving the right to membership in the United States Senate from Pennsylvania.

Agreed to S. Res. 288, increasing from \$5,000 to \$8,000 the sum for investigating the choice of Postmasters in Presidential offices and carriers.

Agreed to S. Res. 291, authorizing an investigation and report of the charges that vast tracts of land within the area of the land ceded to the United States by the Government of Mexico were corruptly and fraudulently turned over to private interests and are being held without color of title.

Resumed consideration of the Multilateral Peace Treaty.

Messrs. Shortridge, Calif., R.; King, Utah, D., and others spoke on the Treaty.

Discussed S. J. Res. 117, by Mr. Edge, N. J., R., calling on the Chief of Army Engineers for information on plans to improve the Panama Canal and plans for building the Nicaragua Canal.

Messrs. Robinson, Ark., D.; King, Utah, D.; Edge, N. J., R., and others spoke on the bill.

Executive session.

Adjourned.

House:

The House was not in session.

Monday, January 14, 1929

Senate:

Messrs. Moses, N. H., R., and McKellar, Tenn., D., were appointed members of the Joint Select Committee for the Disposition of Useless Papers in the Post Office Department.

Messrs. Hale, Me., R., and Swanson, Va., D., were appointed members of the Joint Select Committee for the Disposition of Useless Papers in the Navy Department.

Passed several bills on the calendar.

Passed H. R. 14922, increasing from \$5,300,000 to \$6,550,000, the amount of appropriation for the cost of a two-fleet submarine.

Resumed consideration of the Multilateral Peace Treaty in open executive session.

Messrs. Robinson, Ark., D.; Robinson, Ind., R.; Bingham, Conn., R., and others spoke on the Treaty.

Mr. McKellar, Tenn., D., spoke on the refunding of taxes.

Executive session behind closed doors.

Recessed.

House:

Agreed to resolution electing Representative Burton L. French, Idaho, R., chairman, and Representative Frank Crowther, N. Y., R., members of the Standing Committee on Memorials.

Agreed to H. Res. 267, appropriating not more than \$1,500 for the expenses of the subcommittee of the committee on the District of Columbia investigating the Government of the District.

Resumed consideration of H. R. 15712, the War Department Appropriation bill.

Representatives La Guardia, N. Y., R.; Linthicum, Md., D.; Barbour, Calif., R.; Morin, Pa., R., and others spoke on the bill.

Adjourned.

Tuesday, January 15, 1929

Senate:

Messrs. Reed, Pa., R.; Greene, Vt., R.; Fletcher, Fla., D., were appointed conferees on H. R. 12449, to define the words "child" and "children," as used in the Acts of May 18, 1920, and June 10, 1922.

Debated and ratified by a vote of 85 to 1 (not voting, 9) the Multilateral Peace Treaty. (For the text and explanation of the Treaty, see CONGRESSIONAL DIGEST for December, 1928.)

Messrs. Walsh, Mont., D.; Heflin, Ala., D.; Dill, Wash., D.; Blaine, Wis., R.; Glass, Va., D., and others spoke on the Treaty.

Executive session.

Adjourned.

House:

Representative Cramton, Mich., R., spoke on the accomplishments of Stephen T. Mather, the first Director of the National Park Service, who had been forced to resign on account of ill health.

Representative Garner, Texas, D., spoke on the First Deficiency bill.

Representatives Morin, Pa., R.; James, Mich., R., and McSwain, S. C., D., were appointed conferees on H. R. 12449, to define the terms "child" and "children," as used in the Acts of May 18, 1920, and June 10, 1922.

Representative Bogg, Ohio, R., spoke on tax refunds.

Representative Almon, Ala., D., spoke on Muscle Shoals.

Passed H. R. 15712, the War Department Appropriation bill. Passed several bills for additional judges in New York, Florida and the second judicial circuit.

Adjourned.

Senate:

Agreed to S. Res. 296, requesting the Secretaries of War and Navy to transmit to the Senate a list of fatalities in the aviation service of the Army and Navy during the past five years.

Agreed to S. Res. 297, directing the Federal Power Commission to transmit to the Senate all protests against the leasing of Cumberland Falls for power development.

Received the conference report on H. R. 15089, the Interior Department Appropriation bill.

Mr. Swanson, Va., D., spoke on the construction of cruisers.

Debated and agreed to the conference report on H. R. 15089, the Interior Department Appropriation bill.

Mr. Sheppard, Texas, D., spoke on prohibition.

Agreed to conference report on H. R. 15569, the Departments of State, Justice, Judiciary, Commerce and Labor Appropriation bill.

Resumed consideration of H. R. 11526, authorizing the construction of certain naval vessels.

Executive session.

Adjourned.

House:

Received the conference report on H. R. 16301, the Appropriation bill for the Executive Offices and Sundry Independent Executive Bureaus, Boards and Commissions.

Passed S. 3162, authorizing the improvement of the Oregon Caves, in the Siskiyou National Forest, Oregon.

Passed H. R. 15899, authorizing the Secretary of the Interior to issue patents for lands in Michigan held under color of title.

Passed by a vote of 39 to 3, H. R. 479, authorizing the Secretary of the Interior to grant certain oil and gas prospecting permits and leases.

Passed H. R. 15732, making an additional grant of land for a disabled miners' hospital, Utah.

Passed several bills on the calendar.

Received conference report on H. R. 15569, the Departments of State, Justice, Judiciary, Commerce and Labor Appropriation bill.

Adjourned.

Thursday, January 17, 1929

Senate:

Mr. Heflin, Ala., D., spoke on Government cotton reports.

Resumed consideration of H. R. 15848, the First Deficiency bill.

Mr. Tydings, Md., D., spoke on the construction of cruisers.

Messrs. Bruce, Md., D.; Harris, Ga., D.; Blaine, Wis., R., and others spoke on the First Deficiency bill.

Recessed.

House:

Agreed to conference report on H. R. 15569, the Departments of State, Justice, Judiciary, Commerce and Labor Appropriation bill.

Sent back to conference the Interior Department Appropriation bill after agreeing to several Senate Amendments.

Representative Chindbloom, Ill., R., spoke on the life of Benjamin Franklin.

Debated H. R. 16301, the Independent Offices Appropriation bill.

The Speaker presented to the House the resignation of Willis G. Sears, Nebr., R., from the Committee on Claims.

Adjourned.

Friday, January 18, 1929

Senate:

Messrs. Smoot, Utah, R.; Keyes, N. H., R., and Harris, Ga., D., were appointed conferees on H. R. 15089, the Interior Department Appropriation bill.

Resumed consideration of H. R. 15848, the First Deficiency Appropriation bill.

Messrs. Norris, Nebr., R.; Jones, Wash., R.; Glass, Va., D., and others spoke on the bill.

Executive session.

Recessed.

House:

Agreed to S. Con. Res. 28, for the assembling of the two Houses of Congress on Wednesday, February 13, 1929, for the recounting and entering on the Journal of the two Houses the electoral votes for President and Vice-President.

Agreed to H. Res. 294, making it in order for the House to recess for the counting of the electoral votes on Wednesday, February 13, 1929.

Representatives Morin, Pa., R.; James, Mich., R., and McSwain, S. C., D., were appointed conferees on H. R. 9961, equalizing the rank of officers in positions of great responsibility in the Army and Navy.

Continued on page 64

EXECUTIVE DEPARTMENT

The White House Calendar

December 17 to January 19

Executive Orders

December 17—An executive order creating San Francisco, Calif., a customs port of entry, No. 28.

December 22—An executive order authorizing the Secretary of the Treasury to continue under temporary appointment prohibition agents, inspectors and investigators entitled to military preference until ratings of examinations.

January 11—An executive order extending for ten years the trust period on allotments to Iowa Indians.

January 14—An executive order withdrawing certain lands for carrying into effect the convention between the United States and Great Britain.

January 16—An executive order extending trust period for ten years on allotments of Rosebud Indians.

January 19—An executive order withdrawing a 40-acre tract of land in Oregon for use as a lookout station.

Proclamations

December 22—A proclamation increasing the tariff rate on onions.

December 22—A proclamation of the International Radio Telegraph Convention and General Regulations concluded between the United States and other Governments at Washington, on November 25, 1927.

January 7—A proclamation eliminating certain lands from the Mount Olympus National Monument, Wash.

January 15—A proclamation enlarging Custer State Park Game Sanctuary, S. D.

January 17—A proclamation increasing the rate of duty on plate glass unsilvered.

January 18—A proclamation of the Treaty of Conciliation between the United States and Finland.

January 18—A proclamation of the Arbitration Treaty between the United States and Finland.

January 19—A proclamation increasing the rate of tariff on peanuts.

January 21—A proclamation transferring to the Territory of Hawaii a lot in Kahului, Island of Maui.

Important Civilian Appointments

December 22—Kyle Elam, Port Arthur, Texas, to be collector of customs for customs collection district No. 21, Port Arthur, Texas.

January 3—Medical Director Charles E. Riggs to be Surgeon General and Chief of the Bureau of Medicine and Surgery in the Department of the Navy, with the rank of rear admiral.

January 4—Owen J. Roberts, Pennsylvania, to be one of special counsel to have charge and control of the prosecution of litigation in connection with certain leases of oil lands and incidental contracts.

January 5—Dr. Cassius J. Van Slyke to be assistant surgeon in the Public Health Service.

January 5—Robert R. Nevin, Ohio, to be United States District Judge, Southern District of Ohio.

January 5—Leo A. Rover, District of Columbia, to be United States Attorney, District of Columbia.

January 5—William A. Bootle, of Georgia, to be United States Attorney, District of Columbia.

January 5—W. Vosco Call, of Utah, to be United States Marshal, District of Utah.

January 5—Charles A. Smith, Indiana, to be United States Marshal, District of Utah.

January 9—Norval P. Nichols, of Porto Rico, to be Commissioner of Immigration at the port of San Juan, P. R.

January 12—William John Cooper, of California, to be Commissioner of Education.

January 12—Levi H. Bancroft, Wisconsin, to be United States Attorney, Eastern District of Wisconsin.

January 14—Grady Reynolds, Alabama, to be United States Attorney, Middle District of Alabama.

January 14—Charles H. Rawlinson, Wisconsin, to be United States Marshal, Western District of Wisconsin.

January 15—Walter O. Woods, of Kansas to be Treasurer of the United States.

January 16—Edward E. Jones, of Pennsylvania, to be Register of the Treasury.

January 16—Warren N. Cuddy, of Alaska, to be United States Attorney, District of Alaska, Division No. 3.

January 17—Louis M. Hall, of St. Louis, Mo., to be Collector of Customs for Customs Collection District No. 45, with headquarters at St. Louis, Mo.

January 17—Edward K. Massee, of Hawaii, to be United States district judge, district of Hawaii.

January 17—Charles S. Davis, of Hawaii, to be third judge of the circuit court, first circuit, Territory of Hawaii.

January 18—Charles H. March, of Minnesota, to be a member of the Federal Trade Commission for a term of seven years from September 26, 1928.

January 19—Harrie Brigham Chase, of Vermont, to be circuit judge, second circuit.

January 19—Crate D. Bowen, of Florida, to be United States district judge, southern district of Florida.

January 19—Alexander Akerman, of Florida, to be United States district judge, southern district of Florida.

Messages to Congress

December 21—A message transmitting supplemental estimate appropriating \$12,500 for the Department of Agriculture for the fiscal year 1929.

December 22—A message transmitting supplemental esti-

Continued on page 64

JUDICIAL DEPARTMENT

The Month in the Supreme Court

January 2 to January 21

Great Lakes Water Diversion Cases Decided

Reconvening after the December recess the Supreme Court of the United States, on January 2, handed down written opinions in 23 cases and rendered 4 per curiam decisions. Probable jurisdiction was found to be shown in 1 case. Writs of certiorari were granted in 2 cases and petition for writs were denied in 4 cases.

On January 7, the Court granted petitions for writs of certiorari in 2 cases and denied petitions for writs in 26 cases. Per curiam decisions were announced in four cases. Two cases were dismissed on motion of counsel as a result of decisions handed down on January 2.

On January 14, the Court decided 11 cases, 5 by written opinions and 6 by per curiam decisions. It was announced by Chief Justice Taft that the Court would recess from January 21 to February 18.

On January 21, the Court handed down written opinions in 2 cases. The Chief Justice announced per curiam decisions in 5 cases. Petitions for writs of error were denied in 9 cases. Pursuant to its order the Court, at the close of the session, recessed until February 18.

The Case—Nos. 7, 11 and 12. States of Wisconsin, Minnesota, Ohio and Pennsylvania, v. State of Illinois and Sanitary District of Chicago; States of Missouri, Kentucky, Tennessee, Louisiana, Mississippi and Arkansas, Intervening Defendants; State of Michigan v. State of Illinois and Sanitary District of Chicago; State of New York v. Same, Original. Supreme Court of the United States.

The Decision—The States bordering on the Great Lakes were held to be entitled to a decree which will be effective in bringing to an end the "unwarranted" part of the diversion of water from Lake Michigan through the Chicago River for purposes of sewage disposal, but the Court held, also, that the Chicago Sanitary District should be accorded a reasonable practicable time in which to provide some other means of disposing of sewage. The cases were referred back to the Special Master, Mr. Charles Evans Hughes, to determine the practical measures needed to effect the ordered change in method of disposing of sewage.

The Opinion—Mr. Chief Justice Taft, on January 14, delivered the opinion of the Court, which was unanimous, in part as follows:

These are amended bills by the State of Wisconsin, Minnesota, Michigan, Ohio, Pennsylvania and New York, praying for an injunction against the State of Illinois and the Sanitary District of Chicago from continuing to withdraw 8,500 cubic feet of water a second from Lake Michigan at Chicago.

The Court referred the case to Charles Evans Hughes as a Special Master, with authority to take the evidence, and to report the same to the Court with his findings of fact, conclusions of law and recommendations for a decree, all to be subject to approval or other disposal by the Court. The Master gave full hearings and filed and submitted his report November 23, 1927, to which the complainants duly lodged exceptions, which have been elaborately argued.

When these bills were filed, there was pending in this Court an appeal by the Sanitary District of Chicago from a decree granted at the suit of the United States by the United States District Court for the Northern District of Illinois, against a diversion from the Lake in excess of 250,000 cubic feet per minute, or 4.1567 cubic feet per

second. This amount had been permitted by the Secretary of War. In January, 1925, this Court affirmed the decree, without prejudice to the granting of a further permit by the Secretary of War, according to law. 266 U. S. 405. On March 3, 1925, the Secretary of War after that decree enlarged the permit for a diversion not to exceed an annual average of 8,500 cubic feet per second, upon certain conditions hereafter to be noted.

The amended bills herein averred that the Chicago diversion had lowered the levels of Lakes Michigan, Huron, Erie and Ontario, their connecting waterways and of the St. Lawrence River above tidewater, not less than six inches, to the serious injury of the complainant States, their citizens and property owners; that the acts of the defendants have never been authorized by Congress, but were violations of the rights of the complainant States and their people; that the withdrawals of the water from Lake Michigan were for the purpose of taking care of the sewage of Chicago and were not justified by any control Congress had attempted to exercise or could exercise in interstate commerce over the waters of Lake Michigan; and that the withdrawals were in palpable violation of the Act of Congress of March 3, 1899.

The bills prayed that the defendants be enjoined from permanently diverting water from Lake Michigan or from dumping or draining sewage into its waterways which would render them unsanitary or obstruct the people of the complainant States in navigating them.

Motion to Dismiss Case Was Denied

The State of Illinois filed a demurrer to the bills and the Sanitary District of Chicago an answer, which included a motion to dismiss. The States of Missouri, Kentucky, Tennessee and Louisiana, by leave of Court, became intervening codefendants, on the same side as Illinois, and moved to dismiss the bills. The demurrer of Illinois was overruled and the motions to dismiss were denied, without prejudice.

Thereupon the intervening defendants and the defendants, the Sanitary District and the State of Illinois, filed their respective answers. The States of Mississippi and

Arkansas were also permitted to intervene as defendants, and adopted the answers of the other interveners.

The answers of the defendants denied the injuries alleged, and averred that authority was given for the diversion under the acts of the Legislature of Illinois and under acts of Congress and permits of the Secretary of War authorized by Congress in the regulation of interstate commerce. All the answers stressed the point that the diversion of water from Lake Michigan improved the navigation of the Mississippi River and was an aid to commerce of the Mississippi Valley and sought the preservation of this aid.

They also set up the defense of laches, acquiescence and estoppel, on the ground that the purposes of the canal and the diversion were known to the people and the officials of the complainant States, and that no protest or complaint had been made in their behalf prior to the filing of the original bills herein.

The Master has made a comprehensive review of the evidence before him in regard to the history of the canal, the extent and effect of the diversion, the action of the State and Federal Governments, the plans for the disposal of the sewage and waste of Chicago and the other territory within the Sanitary District, as well as the character and feasibility of works proposed as a means of compensating for the lowering of lake levels.

For several years, including the inexcusable delays made possible by the failure of the Federal Court in Chicago to render a decision in the suit brought by the United States, the District authorities have been maintaining the diversion of 8,500 cubic feet per second or more on the plea of preserving the health of the District. Putting this plea forward has tended materially to hamper and obstruct the remedy to which the complainants are entitled in vindication of their rights, riparian and other.

The intervening States on the same side with Illinois, in seeking a recognition of asserted rights in the navigation of the Mississippi, have answered denying the rights of the complainants to an injunction. They really seek affirmatively to preserve the diversion from Lake Michigan in the interest of such navigation and interstate commerce, though they have made no express prayer therefor.

In our view of the permit of March 3, 1925, and in the absence of direct authority from Congress for a waterway from Lake Michigan to the Mississippi, they show no right-

ful interest in the maintaining of the diversion. Their motions to dismiss the bills are overruled and so far as their answer may suggest affirmative relief, it is denied.

In increasing the diversion from 4,167 cubic feet a second to 8,500, the Drainage District defied the authority of the National Government resting in the Secretary of War. And in so far as the prior diversion was not for the purposes of maintaining navigation in the Chicago River it was without any legal basis, because made for an inadmissible purpose.

It therefore is the duty of this Court by an appropriate decree to compel the reduction of the diversion to a point where it rests on a legal basis and thus to restore the navigable capacity of Lake Michigan to its proper level.

The Sanitary District authorities, relying on the argument with reference to the health of its people, have much too long delayed the needed substitution of suitable sewage plants as a means of avoiding the diversion in the future. Therefore they cannot now complain if an immediately heavy burden is placed upon the District because of their attitude and course.

The situation requires the District to devise proper methods for providing sufficient money and to construct and put in operation with all reasonable expedition adequate plants for the disposition of the sewage through other means than the Lake diversion.

Though the restoration of just rights to the complainants will be gradual instead of immediate, it must be continuous and as speedy as practicable, and must include everything that is essential to an effective project.

The Court expresses its obligation to the Master for his useful, fair, and comprehensive report.

To determine the practical measures needed to effect the object just stated and the period required for their completion, there will be need for the examination of experts; and the appropriate provisions of the necessary decree will require careful consideration.

For this reason, the case will be again referred to the Master for a further examination into the question indicated. He will be authorized and directed to hear witnesses presented by each of the parties and to call witnesses of his own selection, should he deem it necessary to do so, and then with all convenient speed to make report of his conclusions and of a form of decree.

It is so ordered.

Supreme Court will Pass on the Effects of a "Pocket Veto"

The U. S. Supreme Court on January 21, granted a writ of certiorari in the case of the Okanogan, Methow, San Poils (or San Poils), Nespelen, Colville and Lake Indian Tribes or Bands of the State of Washington, Petitioners v. The United States, No. 565.

This case came to the Supreme Court from the U. S. Court of Claims and involves the question of a "Presidential Pocket Veto."

The full history of this case and a full discussion of the "Pocket Veto" question will be found in THE CONGRESSIONAL DIGEST for December, 1928.

Action Taken By Congress

(Continued from page 60)

Agreed to Senate Amendments on H. R. 4930, authorizing the Secretary of War to award a Nicaraguan Campaign badge to Capt. James P. Williams in recognition of his services to the United States in Nicaragua in 1912 and 1913.

Agreed to Senate amendments on several relief bills. Resumed consideration of H. R. 16301, the Independent Offices Appropriation bill.

Representatives Cramton, Mich., R.; La Guardia, N. Y., R.; Box, Texas, D.; Robison, Ky., R., and others spoke on the bill. Defeated by a vote of 118 to 115, a motion to recommit H. R. 16301, the Independent Offices Appropriation bill, and then passed the measure.

Representatives Morin, Pa., R.; James, Mich., R., and McSwain, S. C., D., were appointed conferees on H. R. 12533, for the benefit

of Morris Fox Cherry.

Adjourned until Monday, January 21, 1929.

Saturday, January 19, 1929

Senate:

Considered the nomination of Roy O. West to be Secretary of Interior in executive session.

Messrs. Nye, N. D., R., and Pittman, Nev., D., were appointed members of the Joint Select Committee for the Disposition of Useless Papers in the Interior Department.

Recessed.

House:

The House was not in session.

The White House Calendar

(Continued from page 61)

mate of appropriation of \$45,000, for the expenses of the inaugural ceremonies of 1929.

January 3—A message transmitting supplemental estimate of appropriation of \$5,000 for United States Senate for the fiscal year 1929.

January 3—A message transmitting supplemental estimate of appropriation of \$13,500 for the Senate for the fiscal year 1929.

January 3—A message transmitting supplemental estimate of appropriation of \$10,000 for the Architect of the Capitol.

January 5—A message transmitting supplemental estimate of appropriation of \$13,400 for the Federal Board for Vocational Education.

January 5—A message transmitting supplemental estimate of appropriation of \$7,130,000 for the Porto Rican Hurricane Relief Commission.

January 8—A message transmitting report from the Chief of Engineers on preliminary examination and survey of Shamokawa (Steamboat) Slough, Wash.

January 9—A message transmitting supplemental esti-

mate of appropriation of \$5,500 for fiscal year 1930 for the War Department.

January 9—A message transmitting supplemental estimate of appropriation of \$297,540 for the War Department.

January 9—A message transmitting supplemental estimate of appropriation of \$10,000,000 for the War Department.

January 14—A message transmitting supplemental estimate of appropriation pertaining to the legislative establishment, Library of Congress, of \$7,220.

January 17—A message transmitting supplemental estimate of \$50,000 for the Civil Service Commission.

January 17—A message transmitting supplemental estimate of \$350,000 for the United States Employees' Compensation Commission.

January 17—A message transmitting deficiency estimate of \$658.75.

January 17—A message transmitting supplemental estimate of \$1,674,000 for the District of Columbia.

January 18—A message transmitting supplemental estimate of \$5,000 for the office of public buildings and public parks of the National Capital.

Provisions of the Census Bill

(Continued from page 45)

the population is by far the most important feature of the decennial census and should be given primary consideration in deciding upon the date of the census. Of the 14 censuses of population that have been taken, 4 were as of the first Monday in August, 8 as of June 1, 1 as of April 15, and 1 as of January 1. All of these enumerations have been made during the even decennial year, and the committee feels that it is essential that future enumerations should be made for the same decennial period. Therefore it is averse to advancing the date of enumeration of the population to the fall of 1929. Furthermore, many of the members of the

committee were of the opinion that the enumeration of the farms could be made just as complete and accurate in the spring of the year as in the fall. Taking all things into consideration, the committee concluded that the best time for taking a combined census of population and agriculture was the month of May and accordingly the bill provides that the census shall be taken as of 1st day of May.

The bill should be passed at this session of Congress in order that the Director of the Census may have time to make adequate preparations for the task of taking the next decennial census of the United States.

Sources from which Material in this Number is Taken

Articles for which no source is given have been specially prepared for this number of THE CONGRESSIONAL DIGEST

1. Report of House Committee on Census, January 8, 1929.
2. Hearings, subcommittee of House Committee on Census, June 27-29, 1921.
3. Hearings, House Committee on Census, January-February, 1927.
4. Congressional Record, February 16, 1927.
5. Congressional Record, January 16, 1929.
6. Congressional Record, January 17, 1928.
7. Congressional Record, January 11, 1929.
8. Hearings, House Committee on Census, February 14-21, 1928.

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October, 1923-September, 1924

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Peace Proposals Before 68th Congress
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October, 1924-December, 1925

America's Stand Against Liquor
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Postal Pay and Rate Issue
Review of 68th Congress
Federal Department of Aeronautics
Congress and Cooperative Marketing
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Federal Estate Tax Repeal

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January-December, 1926

American Merchant Marine
The United States and the World Court
The McFadden Banking Bill
Should United States Adopt Metric System
Federal Department of Education*
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Changing Sessions of Congress and Inauguration Day
The Direct Primary System
Cloture in the U. S. Senate
Settlement of U. S. and German War Claims

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January-December, 1927

St. Lawrence vs. New York Shipway
The Boulder Dam Project
The Problem of Railroad Consolidations
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The Problem in China
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Question of Capital Punishment
The Problems of Copyright Reform
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The Capital of the United States

Vol. VII

January-December, 1928

The New Congress and the Tax Question
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Can War Be Outlawed?
Third Term Controversy
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Merchant Marine Act—1928
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